SUPREME COURT OF THE UNITED STATES.

No. 433.

THOMPSON DEAN, APPELLANT,

vs.

THOMAS A. NELSON AND WIFE, AND BEN. MAY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST TENNESSEE.

INDEX.

	Original.	Print.
Bill	2	1
Summons	12	4
Bond to prosecute	13	4
Amended bill	16	5
Answer of Dean	19	6
Exhibits to same.—A	47	14
B, (mortgage)	48	15
C	54	17
D	56	17
E	63	20
Transcript of civil commission	72	23
Exhibits G, H and I	125, 127, 128	41
DEPOSITIONS.		
Complainant's proof,—J. H. Pepper	130	43
T. A. Kendig	132	43
C. S. Cook	146	47
C. B. Church	149	48
J. J. Murphy	155	50
Ben. May	170	55
T. A. Nelson	201	65
Defendant's proof.—Deposition of Fitch	237	76
Pepper	268	87
Dean	261	85
Agreed facts	229	74
Decree	289	93

1 UNITED STATES OF AMERICA:

Be it remembered that the Circuit Court of the United States for the district of West Tennessee was begun and held at the federal court-rooms, in the city of Memphis, on the first Monday of, it being the second day of March, in the year of our Lord one thousand eight hundred and sixty-eight. Present and presiding the Hon. Connally F. Trigg, United States district judge for the district of Tennessee; present also Abram S. Mitchell, clerk.

2 To the hon. the judge of the Circuit Court of the United States for the sixth circuit district of West Tennessee, sitting in equity:

Humbly complaining, Thomas A. Nelson, and Miriam W. Nelson, his wife, of Memphis, and citizens and residents of the State of Tennessee, bring this their bill against Thompson Dean, of Cincinnati, and a citizen of the State of Ohio, and therefore your orators complain and say:

That on or about the 11th day of June, 1861, your orator, Thomas A. Nelson, purchased from one James H. Pepper fifty shares of the capital stock of $100, each amounting to $5,000 in the Memphis Gass Light Company, a corporation incorporated by the laws of the State of Tennessee, and having its place of business at Memphis, in said State; and afterwards, and on or about the 20th of July, 1861, he purchased from said Pepper one hundred and fifty-four further shares of the capital stock in said company, the shares being

3 each for a like sum of one hundred dollars each, amounting to the further sum of fifteen thousand four hundred dollars; and he, said Pepper, assigned to your orator, Tho's A., said shares of stock respectively on the books of said company at its office in Memphis, on about the dates above mentioned; and thereupon said company duly issued to your orator, said Thomas A., its certificate of stock according to said assignments from said Pepper, to wit: One certificate dated Memphis, June 11th, 1861, for fifty shares of one hundred dollars each; and on the 20th day of July, 1861, its other and further certificate for one hundred and fifty-four shares of one hundred dollars each, amounting in the aggregate to two hundred and four shares, of one hundred dollars each, being twenty thousand four hundred dollars of the capital stock of said company, the certificates of which are still held by your orator and oratrix, and will be produced and filed in evidence herein should the same be necessary therefor.

4 Your orator and oratrix further state that afterwards, and about the 1st of June, 1862, your orator, Thomas A., as a provision and separate support for his wife, your oratrix, said Miriam W., transferred upon the books of said company, at their office in Memphis, to the said Miriam W., the said two hundred and four shares of the capital stock of said company to and for her sole and separate use; but he expressly provided in and by the terms of the written assignment on the books of the company that your oratrix, said

Miriam W., should take the same upon the same terms and with the same incidents as your orator, Thomas A., took the same in the purchases above stated from said Pepper.

The exact words of such assignments or transfers from said Tho's A. to said Miriam W. they cannot now give, not having access thereto, but the same will sufficiently appear by an inspection of the books of the said Memphis Gass Light Company, or by copies thereof, should the same become necessary.

5 Your orator and oratrix further state, that your orator, Thomas A., purchased said stock at par; that is, the entire amount for twenty thousand four hundred dollars, which was by the terms of the purchase on a credit, and was to draw six per cent. interest from the respective dates of said purchases; and it was further in substance agreed between said James H. Pepper and your orator, Thomas A., that the dividends on said stock was to be applied to the payment, first of the interest due from time to time on the stock, and the excess over payment of interest to the extinguishment of the principal debt, until the same should be paid in full.

Your orator and oratrix have been ever ready and willing in all things to comply with and perform their part (or the part of your orator, Thomas A.) of said purchases and contracts, and have frequently offered and tendered so to do, and here again offer and tender to perform and comply with the said contracts and purchases in all and every respect.

6 The papers shewing the exact terms of said purchases are, as your orator and oratrix are informed, in the hands or under the control of the said Thompson Dean, the defendant hereto, and he can produce or account for the same.

Now your orator and oratrix state and charge that the said Thompson Dean came to Memphis some time in the summer of 1862, and set up a claim as assignee, or in some manner under said James H. Pepper to be entitled in some way to the proceeds of said two hundred and four shares of the capital stock of said Gas Light Company so sold and transferred by said Pepper in June and July, 1861, to your orator, Thomas A., to wit, to the purchase money and interest due from your orator and oratrix therefor, or to the stock itself, and at a time when the State of Tennessee, and especially when the western district were without any civil courts, either State or national, or other means of civil redress or remedy or relief

7 from such injuries as will be now stated, he, said Thompson Dean, seized and took into his possession and control all the property, gassworks, books, assets, franchises, and everything belonging to said Memphis Gas Light Company. He claimed, as your orator and oratrix are informed and charge, to take possession of and to manage and control the same as "receiver," and under this pretence he managed the entire company and its affairs by himself, his agents and employees. He collected and dissbursed all the earnings and receipts of the company, and, except to such stockholders as he chose to admit to a participation in the profits, he denied all others, and amongst them your orator and oratrix, on their said two hundred

and four shares all participation in the receipts and profits, but took and applied the same to his own uses and purposes. How long this claim or pretence of said Dean that he was managing the affairs
8 of said company, as "receiver," or the precise time when he ceased to do so, if at all, your orator and oratrix are not advised. They, however, state and charge that he has transferred or had the said two hundred and four shares of the capital stock of said company, which was so purchased by your orator, Thomas A., from said James H. Pepper, transferred on the books of the company to himself or to some person under him, and as they are advised, he repudiates and denies to them, or either of them, any right, title, and interest in said stock or in the dividends or earnings thereof, or any rights under the purchases and transfers of stock to your orator, Thomas A., from said James H. Pepper, in June and July, 1861, and has done so ever since he usurped and assumed the entire control of the business and the franchises of the company, in the summer of 1862.

Your orator and oratrix are willing to and do hereby admit
9 that said Dean became vested with all the rights, by assignment or otherwise, in 1861 or '2, of the said James H. Pepper to receive the purchase money and interest for the said two hundred and four shares of the capital stock of said Gas Light Company, and that the matter stands the same as if the purchase had been from him instead of from said Pepper.

The said Pepper is not within the jurisdiction of the court, and hence is not made a party to this bill.

The premises considered, your orator and oratrix respectfully pray that said Thompson Dean may be made a party defendant to this bill, and may a writ of subpœna and copy of the bill issue and be served on said Dean, (who is now in the district of west Tennessee, and within the jurisdiction of the court,) and may he answer, &c., and may, on final hearing, the said two hundred and four
10 shares of the capital stock of the Memphis Gas Light Company be decreed to belong to your orator and oratrix, and also all stock dividends which have been made thereon since the dates of the purchases thereof, if any. May a specific execution and performance of the contracts for the purchase of said stock by your orator, Thomas A., and securing the payment of the purchase money therefor, and interest thereon, be decreed and enforced against said defendant, and with that view may he be decreed and required to bring the said contract into court for the judgment and construction of the court thereof. May an account be taken of all the dividends, receipts, or nett profits of the said two hundred and four shares of said capital stock of said company, which have accrued, been earned or declared since said Dean assumed the control of the company, be taken,
11 and the same be decreed and applied to the payment and satisfaction of the purchase money and interest due for said stock, and the said Dean be decreed and compelled so to apply the same, and if necessary, may an injunction issue, and said Dean be enjoined from transferring or assigning said stock or any part thereof

and from the further collection of dividends or profits in said stock, and if found needful in the progress of the cause, may a receiver be appointed to take charge of said stock, and to collect the dividends and profits thereon, to be applied under the directions of the court to the payment of the purchase money and interest therefor, and for all other fit and needful relief, according to the practice of Courts of Equity.

And, as in duty bound, &c.,

KORTRECHT & CRAFT,
Sols for Compl'ts.

12 The President of the United States of America to the marshal of the district of west Tennessee, greeting:

You are hereby commanded to summon Thompson Dean, a citizen of the State of Ohio, if he be found within your district, to appear before the judge of the Circuit Court of the United States, in the sixth circuit for the district of West Tennessee, at Memphis, on the first Monday in September next, and then and there to answer the original bill of complaint in favor of Thos. A. Nelson and Miriam W. Nelson, his wife, against said Thompson Dean, a copy whereof accompanies this writ.

Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this first Monday in March, 1865, and of American independence 89th.

A. S. MITCHELL, *Cl'k.*
ISAAC MORRISON,
D. Clerk of said Court.

Return.

Came to hand same day issued, and on this day executed this writ on Thompson Dean, and delivered him a copy of the bill or declaration in this case June 20th, 1865.

W. W COLEMAN, *Deputy U. S. Marshall.*

13 And the said complainants then and there executed and filed the following bond, to wit:

Know all men by these presents, that we, Thomas A. Nelson and Miriam W. Nelson, his wife, are held and firmly bound unto Thompson Dean, in the sum of two hundred and fifty dollars, to be void on condition that said Thomas A. and Miriam W. Nelson do pay and satisfy all costs that may accrue in defendants behalf, in the prosecution of a suit this day commenced by said Nelson and wife, in the Circuit Court of the United States for the district of West Tennessee, at Memphis, against said Thompson Dean, on failure of plaintiffs to prosecute their said suit with effect, and also in failure of the defendant if convicted to pay said costs.

Witness our hands and seals this 20th day of June, 1865.

[SEAL.] T. A. NELSON,
[SEAL.] MIRRIAM W. NELSON,
By C. KORTRICHT, *Her Attorney.*
[SEAL.] JOHN JOHNSON.

14 And at the March term, 1866, of said court, and upon the 20th day of said month, the following order was made in said cause:

THOMAS A. NELSON AND WIFE
v.
THOMPSON DEAN. } In equity.

This day came the parties by their solicitors, and the complainants by leave of the court withdrew their demurer heretofore filed to the cross-bill of the defendant, and thereupon by leave of the court the said defendant withdraws his said cross-bill, and asked leave to amend his answer herein, which being granted, said amendment is made.

15 And afterwards, at the term of said court last aforesaid, and upon the 27th day of March, 1868, the following further order was made in said cause, to wit:

THOMAS A. NELSON *et al.*
vs.
THOMPSON DEAN. } In equity.

Now come the parties by counsel, and the complainants ask leave to amend their bill herein, which is granted, and the defendant by leave of the court withdraws his answer to said bill, with leave to answer the bill of complainants when amended, and this cause is continued.

16 And thereupon afterwards, to wit, on the 7th day of April, 1866, the complainants filed in said cause their amended bill, in the words and figures following, to wit:

To the honorable judges of the Circuit Court of the United States, for the sixth circuit, sitting at Memphis, for the district of West Tennessee, in equity:

Humbly complaining Thomas A. Nelson and Miriam Nelson, his wife and Benjamin May, all residents and citizens of the State of Tennessee, being this their amended bill against Thompson Dean, a citizen and resident of the State of Ohio: and thereupon your orators complain and say:

That your orator and oratrix, Thomas A. Nelson and Miriam W. his wife, filed their original bill in this court on the 20th of June, 1865, against the said Thompson Dean, as defendant, wherein

17 they seek to obtain from said Dean the possession, use and benefit of 204 shares of the capital stock of the "Memphis Gas Light Co.," of one hundred dollars each, upon the grounds and for the reason specifically set forth in said bill, to which reference is here made and the statements of which are hereby reaffirmed except so for as corrected by this amendment and supplement.

They respectfully state that Thomas A. Nelson, instead of transferring and assigning said entire two hundred and four shares of stock to said Miriam Nelson, as was stated in the original bill, in fact only

transferred to her one hundred and ninety-four shares having in the same manner previously, and sometime in the latter part of the year, 1861, or early in the year, 1862, transferred the other ten shares to your orator Benjamin May, who held and owned the same on the same terms as your orator and oratrix Thomas A. and Miriam
18 W. Nelson held the other one hundred and ninety-four shares, until wrongfully deprived thereof by the actings and doings of defendant Thompson Dean, as is alleged in said original bill.

And they respectfully pray that the said Benjamin May, may be made party complainant herein, with the other complainants Thomas A. and Miriam W. Nelson, the same as if originally joined therein, and may have the same relief as to said ten shares, as therein prayed for the other complainants, and for other relief &c.

KORTRICHT & CRAFT,
Sol's for Compl't.

19 And thereupon afterwards, to wit, on the 2nd day of April, 1867, the defendant, Thompson Dean, filed his answer in the words and figures following, to wit :

In the Circuit Court of the United States for the district of West Tennessee.

BENJAMIN MAY, THOMAS A. NELSON and Miriam W. Nelson *vs.* THOMPSON DEAN. } In chancery.

The said Thompson Dean, defendant, reserving all right of exception to said bill of complaint for answer thereto, says, that it is true as alleged in said bill that the said Thomas A. Nelson, on the 17th day of June, 1861, purchased from the said James H. Pepper, fifty shares of the capital stock of the Memphis Gas Light Company, and on the 20th day of July, 1861, one hundred and fifty-four shares of such capital stock, at the par value, being one hundred dol-
20 lars per share, and amounting in the aggregate to twenty thousand four hundred dollars; and that said Pepper assigned said stock to said Nelson on the books of the said company, and that the said Nelson on or about the first day of June, 1862, as the defendant is informed, assigned on the books of said company one hundred and ninety-four shares of said stock to the said Miraim W. Nelson, his wife, and ten shares thereof to said Benj. May.

And the defendant further answering, says that it is true as is alleged in said bill, that said stock was purchased by said Thomas A. Nelson on a credit, and he alleges the truth to be, that by the terms of the contract between the said Nelson and said Pepper, the purchase money of said stock with interest thereon, at the rate of six per centum per annum was only payable out of the net earnings of said shares of said stock, and in no other manner whatever if such earnings were applied to such payment, and that said Nelson

21 did not assume or incur any pecuniary or other responsibility whatever, if he applied such earnings in payment, in making said purchase, and that he well knew at the time he made said contract with said Pepper that the said Pepper held said stock in trust for the said defendant, and was only induced to enter into said contract by the causes hereinafter mentioned; that by the terms of said contract the said Nelson agreed to pay to said Pepper the net quarterly earnings of said stock, as the same should be from time to time, declared by said company in payment of the principal of said purchase and accruing interest, such earnings being first applied to the payment of accruing interest, but if the said Nelson should fail to pay to said Pepper any of said installments of the net earnings of said stock quarterly, after the receipt thereof by said company, or a sum equal thereto, then the full sum of principal and interest due on the purchase money of said stock should become payable, as
22 will more fully appear by reference to said contracts herein referred to.

And the defendant further says, that on the 11th day of June, 1861, and at the time of the purchase of said fifty shares of stock, the said Thomas A. Nelson, to secure the payment of the value thereof, viz, the sum of five thousand dollars and accruing interest, executed and delivered to said Pepper, his written obligation for the payment of said sum of money and interest, on the terms and in the manner and on the conditions before mentioned; and the defendant files herewith said written obligation marked (exhibit A,) and makes the same report of this his answer, and refers to the same as specially setting forth the contract between said Nelson and Pepper for the purchase of said stock; and he further says, that the said Nelson to more effectually secure to the said Pepper the payment of said sum of money and interest on said obligation specified in said stock, did on the 20th
23 day of July, 1861, sign, seal and deliver to said Pepper an instrument of writing, by which he granted, bargained, and sold to said Pepper so much of his the said Nelson's interest, right, title, and estate in the property of the Memphis Gas Light Company, (particularly describing the same,) as should be represented by, and equal to, five thousand dollars of the capital stock of said company, at par, with the condition, however, thereunto attached, that if the said Nelson should pay to said Pepper, or his representatives or assigns, his, the said Nelson's, "certain promisory note or obligation, according to the tenor and effect thereof," therein set forth, (being the written obligation above referred to as exhibit A,) then said instrument should be void, else remain in full force, which s'd instrument in writing or deed of diffeasance before the delivery thereof was duly acknowledged by said Nelson, and afterwards recorded, and
24 he makes the same, with indorsements thereon, a part of his answer, by way of incorporation, and files the same herewith, marked (exhibit B;) and he further says and insists that the same is in fact and in legal effect an assignment of the said fifty shares of stock therein mentioned by said Nelson to said Pepper, subject only to be defeated by the payment of said sum of five thousand dollars, with accruing interest, according to the conditions therein set forth.

And the defendant further says, that on the said Nelson's purchasing from said Pepper the said one hundred and fifty-four shares of said capital stock on the 20 May of July, 1861, he made and delivered to said Pepper an obligation in writing, bearing that date under seal for the payment of said Pepper of the par value thereof, being the sum of fifteen thousand four hundred dollars, of exactly the same tenor and effect as the said instrument in writing, marked (exhibit A,) except as to date and amount, and also signed, sealed and acknowledged, and delivered to said Pepper an instrument of writing conveying to him so much of the interest of said Nelson in
25 the property of said company as was represented by and equal to fifteen thousand four hundred dollars of said capital stock, the same being of exactly the same tenor and effect as the instrument in writing hereinbefore referred to, marked (exhibit B,) except as to the date and am't therein specified, and fully setting forth the obligation aforesaid for the payment of said sum of fifteen thousand four hundred dollars; and the defendant submits that the same is a conditional assignment and transfer, by said Nelson to said Pepper, of the said one hundred and fifty-four shares of stock, and was so meant and intended by said parties; which two last-mentioned instruments in writing are herewith filed and marked respectively (exhibit C, and exhibit D,) and made part of this answer. And this defendant expressly denies that the said Thomas A. Nelson ever offered to comply with or perform his part of said contracts, touching the purchase of said stock, according to terms thereof; but on the contrary, this defendant says, that on the 16th day of Septem-
26 ber, 1861, the said Gas Light Company declared a dividend of four per cent. on said stock, and on the 16th day of December, 1861, a further dividend of four per cent. thereon, being the earnings of said stock for the preseeding quarter of a year, respectively, amounting in the aggregate to the sum of sixteen hundred and thirty-two dollars on said two hundred and four shares, which sum of $1600 00 the said Thomas A. Nelson received from the said company as the nett earnings of said two hundred and four shares of said capital stock for the preeceeding two quarters of a year. On the 17th day of December, 1861, and on the 17th day of March, 1862, the said company declared a further dividend of ten per cent. as the nett earnings of the capital stock of said company during the preseeding quarter of a year, being ten dollars on each share of stock, being on said two hundred and four shares, in the aggregate, two thousand and forty dollars, which sum was paid to said Nelson by said company on the 19th day of March, 1862, the said three
27 instalments of the quarterly net earnings of said 204 shares of stocking so received by said Thomas A. Nelson, on and prior to the 19th day of March, 1862, amounting in the aggregate to three thousand six hundred and seventy-two dollars, which sums of money had been received by said company at and before the times respectively aforesaid, when the same were so received by s'd Nelson as the net earnings of said stock. And the defendant expressly

states that the said Nelson did not pay the said installments of the nett earnings of said stock so by him received as aforesaid, either to said Pepper or to this defendant, or any part thereof, nor any sums of money equivalent thereto, nor has he ever paid or tendered to the said Pepper, or to this defendant, any sum or sums of money whatever, either on the principal or interest of said debts, and the whole amount of the principal and accrued interest of said debts,
28 that is to say, the purchase money of said stock and interest thereon accrued remains wholly unpaid, except by the sale of said stock, as hereinafter mentioned, but the said Nelson has neither paid or tendered to said Pepper or this defendant any part thereof. Therefore, this defendant says and insists that by the failure of said Nelson to pay the said several instalments of the nett earnings of said stock, so received by said company, and by himself, and on his failure to pay either of them according to the terms of said contracts, the entire purchase money of said stock became and was due and payable, and the said written instruments by which he, the said Nelson, transferred conditionally the said stock to said Pepper, became and were absolute transfers and consignment thereof.

This defendant says that it is true, as charged in said bill, that said stock, except ten shares thereof, were assigned by said Thomas
29 A. to his said wife, and the said ten shares to said Benjamin May; but he further says that said assignments were made without any valuable consideration, and with full notice of all the foregoing facts and long after the said Thomas A. Nelson had forfeited said stock by his said failure to comply with the conditions of said contracts; and he further says that neither the said Miraim W. Nelson or Benjamin May has never at any time paid or tendered either to said Pepper or this defendant any sum of money whatever, either on the principal or interest of said purchase-money of said stock.

This defendant, further answering, says that it is true, as charged in said bill, that in the year 1861 he became the legal holder, by assignment from said Pepper, of the said notes or obligations, and also of said written instruments, by which the said Thomas A. Nelson conditionally transferred the said stock to said Pepper in the nature of mortgages thereon, and has ever since had the exclusive interest therein. He further admits that in the month of December, 1862,
30 and after the military forces of the United States had taken possession of the said city of Memphis, which city, prior to that time, had been in possession of and under the military control of persons in arms against the government of the United States, he having a large interest in the capital stock of said Gas Light Company, and some of the directors and stockholders thereof being engaged in the rebellion against the government, did, by the order of Maj. General Hurlbert, whose military command then embraced said city in the character of a receiver, and for the common benefit of all persons interested therein, take control of the said companies' affairs and property; but he further says that in the month

of February or March thereafter, as will appear by the records of said company, directors thereof were duly elected, and James M. Williamson duly elected president thereof, and Wm. H. Fitch, jr., the secretary thereof, by such directors; and that annually since the directors for said company have been duly elected, and said president and secretary by successive annual elections, have ever since continued
31 to fill said offices, and now fill the same, and the books and records of said company fully disclose the condition thereof. And he further says that by the order of Brigadier General James C. Veatch, then commanding forces of the United States in the district of Memphis, the secretary of said company was ordered not to pay to disloyal owners of the stock in said company the dividends declared thereon.

And this defendant further says that the interest of said complainants were not effected by said order placeing the assetts and business of said company under his control, because the said complainants, at or about the time when the said city was taken possession of by the forces of the United States as aforesaid, left the said city and went within the military lines of the persons engaged in the rebellion against the government, and so remained during all or the greater portion of the time between that period and the termination of
32 the war; and this defendant admits that since the said Thomas A. Nelson failed to perform and fulfil his said contract for the purchase of said stock, or at least since the said occupation of said city by the military forces of the United States, which enabled him to visit said city and assert such claim, he has claimed that he was justly and in good faith entitled to the said two hundred and four shares of said capital stock of said company, he having been at the time of the sale thereof by said Pepper to said Nelson the real owner thereof, and the said Pepper only holding the same as a trustee for this defendant, who then resided in the State of Ohio, which fact this defendant believes was known to said Thomas A. Nelson at the time he made said purchase; and the terms of said sale being peculiarly favorable to said Nelson, by which he incurred no pecuniary liability whatever, and which, as the said Thomas A. Nelson well knew, the said James H. Pepper was induced to make in con-
33 sequence of the efforts then being made by persons in said city and elsewhere to overthrow the authority of the government of the United States, and the anxiety of the said Pepper, who was then the secretary of said company, to leave the said city on account of said threatened insurrection, and return to the State of Kentucky where he had previously resided, it was not conscionable for the said Nelson to enforce said contract even if he had fully complied with the terms thereof; and having wholly failed so to do, this defendant did claim that he was justly entitled to said stock, and has accordingly asserted his claim thereto.

And this defendant, further answering, says, that while claiming the full benefit of the forfeiture of the conditions on which said Nelson was entitled by said contracts to redeem said stock, he was still anxious, by any judicial proceeding of which the condition of af-

34 fairs in the said city of Memphis admitted, to foreclose an right which the said complainants might assert to said stock by a judicial sale thereof, especially as he the said defendant, and others owing stock in said company, were making efforts, after said city was brought within the control of the authority of the United States, to increase and enlarge the business and value of the stock of said company, and was therefore anxious to foreclose any right which the said complainants might possess in equity to redeem the same, and cause the said stock to be sold for the payment of the am't thereon due. And he further says that by reason of the rebellion recently existing in the United States against the government thereof, the courts of justice in the State of Tennessee, and especially in the western district thereof, were wholly suspended and unable to perform their proper functions, leaving the loyal citizens of the United States without any of the usual modes of enforcing their legal
35 rights; that when the authority of the United States was re-established in the month of June, 186[illegible], in the said western district of said State and in the city of Memphis, and for a long time thereafter, there were no courts open therein to protect the rights of the citizens except such as derived their authority from the military administration of affairs in said district, such military authority having resulted from the total overthrow of the civil authority by the rebellion; the courts of the United States within said district and State being in like manner and from the same cause suspended; that on the 25th day of April, 1863, the said courts being then under the exclusive control of martial law, and the said city of Memphis under the exclusive control of the military authority of the United States, Brigadier General James C. Veatch, a military officer of the United States, and holding a commission as such brigadier general from
36 President of the U. States, and being in command of the district of Memphis, the said district embracing the said city of Memphis in said State of Tennessee, did, by special order numbered 247, organize a court or civil commission for the hearing and determination of all complaints and suits instituted by loyal citizens of the United States for the collection of debts, the enforcement of contracts, the prevention of frauds, the recovery of property, real and personal, and generally to perform such duties and exercise such powers as could be done by a court deriving its powers from military authority; with power to adopt such rules and regulations for the transaction of business as should be found necessary, subject to the approval of the general commanding the district; and by said special order detailed and appointed for said commission as judicial officers thereof, Captain Barbour Lewis; judge; Joseph Williams,
37 and A. C. Ketcham, esq'r, all loyal citizens of the United States; and John G. Grierson, a like loyal citizen, the recorder thereof; a copy of which special order, together with the rules and regulations adopted by said civil commission and approved by said brigadier general commanding said district, are herewith filed and made a part of this answer and marked (exhibit E:) that said civil commission was duly organized, and the members thereof duly quali-

fied, by taking an oath to support the Constitution of the United States and for the faithful performance of their duties, and did thereupon enter upon and assume the duties of their appointment in full complinace with said order, and continued at said city of Memphis to perform the functions conferred by said special order, in open court, in the trial and determination of civil causes, for the period of
38 twelve months or about that period; and during all of said period the said civil commission was the only tribunal in said city or in said district for the general enforcement of civil rights, the ordinary tribunals of justice being, during all of said period, suspended by the actual state of war.

This defendant further says, that on the first day of September, 1863, and during the period aforesaid, he filed in his said court of said civil commission his petition, under the rules so established as aforesaid against the said complainants, Thomas A. Nelson, Miraim W. Nelson, his wife, and Benj. May. to which last-named person said Thomas A. Nelson had assigned ten shares of said stock for the purpose of enforcing, as the assignee thereof, the said contracts made between the said Thomas Nelson and James H. Pepper, and for the purpose of foreclosing any right which said parties might
39 have in equity to redeem said stock, and for the sale thereof, to pay and satisfy the amount due on said contracts to this defendant as assignee thereof, and such proceedings were had thereon before the said court, that afterwards, to wit, on the 12th day of October, 1863, upon the final hearing of said cause by said court or civil commission, this defendant, as such petitioner, by the consideration and judgment thereof, recovered against the s'd Thomas A. Nelson the sum of twenty-three thousand one hundred and sixty-one dollars and ninety-one cents, being the am't then due on said contracts, and being the purchase-money of said two hundred and four shares of stock, and the interest thereon accrued, and costs of suit; and the said court therein further adjudged and decreed, that the right of each of the said defendants to said petition to redeem said stock should be forever bound and foreclosed, unless the sum
40 so due this defendant should be forthwith paid; and that in default of such payment the said stock, or so much thereof as might be necessary, should be sold to satisfy the same, and that assignment thereof should be made to the purchaser; and this defendant further says that the said Thomas A. Nelson, Miraim W. Nelson and Benjamin Mai, and each of them, wholly neglected to pay said sum of money or any part thereof, and the said judgment and decree, having been examined and approved by the said Brigadier General James C. Hatch, still commanding said district, on the 21st day of Oct., 1863, the said recorder of said civil commission, under the order and direction thereof, did, on the 23d day of October, 1863, issue an execution or order of sale on said judgment directed to the marshal of said civil commission, Beverly Searcy, a loyal citizen of the United States, having been appointed and qualified as
41 such marshal, and actually performing the duties of such office, for the sale of said stock; and the said marshal after-

wards, on the 14th day of November, 1863, after giving the notice required by law in the State of Tennessee, in the sale of personal property on execution, of the time, place and terms of the sale of said stock, sold the same at public auction at the door of the court-room of said civil commission at said city, to Alexander Harlin, for fifty-seven dollars per share, being in the aggregate, for said two hundred and four shares, eleven thousand six hundred and twenty-eight dollars; and thereupon the said marshal assigned the said stock to said purchaser, to whom the secretary of said Gas Light Company, in obedience to the said judgment and decree and the order of said civil commisslon herewith filed, marked (exhibit G,) assigned the same, copies of which assignments are herewith filed, marked exhibits H and I on the books of said company, all of which will fully appear by the records of said commission; and this defendant
42 files herewith a complete record of the proceedings and judgment in said cause before the said court of civil commission, and of the proceedings had thereon in the sale and assignment of said stock marked exhibit F, and prays that the same may be deemed a part of this answer and incorporated therein, without more particular recital of the proceedings had in said cause.

This defendant admits that on the second day of December, 1863, the said Alexander Harlin assigned the said two hundred and four shares of stock so purchased by him as above stated, together with other shares of stock held by him in said company, to the defendant, (who is still the holder thereof,) on the books of said company.

This defendant insists that the proceedings and judgment of said court of civil commission are and ought to be in law and equity a complete protection of his rights in the premises, and a bar to
43 any right of redemption which the said complainants might have had in equity touching said stock; and he submits to this honorable court that the said complainants ought not, in equity and good conscience, to be permitted to call in question the validity of said civil commission, or the right of this defendant to seek redress therein, because the said complainants, and especially the said Thomas A. Nelson and Benjamin May, had given aid and encouragement to the rebellion against the government of the United States, by which the ordinary tribunals of justice of the State of Tennessee had been suspended; and he further says that he, the said defendant, has always been a loyal citizen of the United States and supported the authority thereof.

He further says that the purchase of said stock was made by said Thomas A. Nelson from said Pepper at the said city of Memphis, where the said complainants at the time resided; that said con-
44 tracts were all made at said city, and that said complainants had resided at said city up to the time when the military forces of the United States took possession thereof, which was on or about the 5th day of June, 1862.

And the defendant now submits to the court that, by the failure of the said Thomas A. Nelson to pay to said Pepper or to this defendant the nett earnings of the said stock received by him from said com-

pany, as herein-before stated, he forfeited the right to redeem the same; that as well thereby as by the proceedings and judgment of said civil commission, and the sale of said stock under the same, and the title thereto acquired by this defendant under said sale, he is, in equity and good conscience, entitled to hold said stock against the said complainants.

And the defendant further says, that by the inspection of said record of the said cause before the said civil commission, and of the proceedings therein, by which the said defendants thereto were
45 notified of the pendency of that suit, and of the proceedings in the sale of said shares of stock and the assignment thereof there was, as provided by the rules of said civil commission, a substantial compliance as to the mode of proceeding, as far as might be, with the rules and practice of courts of equity in Tennessee as established by the laws of said State.

All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs herein wrongfully sustained.

THOMPSON DEAN.

By WM. S. HAHNAN,
Solicitor for Defendant.

THE STATE OF OHIO, HAMILTON COUNTY,
City of Cincinnati, sct :

Before me, the undersigned, a notary public in and for said county, on this day, personally came Thompson Dean, the
46 above-named defendant, who being by me duly sworn, says that the above and foregoing answer, to which his name is subscribed, is true in substance and matter of fact, and further says not.

T. DEAN.

Subscribed and sworn to by the said Thompson Dean, at said city of Cincinnati, on this the 11th day of July, 1866.

In witness whereof I have hereunto set my hand and affixed my notarial seal on this the day and year above written.

[SEAL.] J. WILSON JOHNSON,
Notary Public, Ham. Co., Ci.

47 *Exhibit "A," to answer of Thompson Dean.—Filed September 9th*, 1865.

$5,000. MEMPHIS, TENNESSEE, *June 11th*, 1861.

For value received I promise to pay to the order of James H. Pepper the sum of five thousand dollars with interest at the rate of six per cent. per annum from date until paid, out of the nett receipts of earnings on the sum of five thousand dollars of the capital stock of the Memphis Gas Light Company, of the city of Memphis, Tennes-

see; said sum and interest being payable in quarter annual installments, the interest being first paid, and balance of said nett receipts then to be applied upon the principal; which said installments shall amount to such sums of money as shall be equal to the quarterly nett receipts of earnings on five thousand dollars of the capital
48 stock of said company. This note and obligation being given for the purchase money of five thousand dollars of the capital stock of said company, sold and transferred to me by said Pepper; and if I fail to pay any of said instalments quarterly as aforesaid, after the receipt by said company of said nett earnings, then the full sum of five thousand dollars, with interest and installments paid shall become due and payable.

[SEAL.] T. A. NELSON.

Exhibit "B."

Know all men by these presents that T. A. Nelson, of the city of Memphis, in the State of Tennessee, in consideration of five thousand dollars to him paid by James H. Pepper, the receipt whereof is hereby acknowledged, dothe hereby grant, bargain, sell, and convey unto said James H. Pepper, his heirs and assigns forever, the
49 following real estate and other property, viz: so much of my undivided interest, right, title, and estate in the property and premises of and belonging to the Memphis Gas Light Company, hereinafter described, as shall be represented by and equal to five thousand dollars of the capital stock of said company at par; said real estate, premises and property being described as follows: the same being situated in the city of Memphis, in the State of Tennessee, being all those certain lots, tracts, or parcels of ground particularly described as follows, viz: block number four hundred and forty-eight, and block number four hundred and forty-five, (448 and 445,) as known on the plan of said city of Memphis, and bounded by Chickasaw street on the west, and by Mill street on the south, each lot fronting one hundred and forty-eight feet and six inches on Chickasaw street, and extending back one hundred forty-eight feet and six inches from the same; also two other certain pieces or parcels of ground known and designated on the plan of said
50 city of Memphis, as lots numbers four hundred and forty-six (446) and four hundred and forty-seven, (447,) fronting two hundred and ninety-seven feet on Main street, and running back west to the said lots above mentioned, and numbered four hundred and forty-eight, and four hundred and forty-five; also my interest, right, title and estate, to the extent aforesaid in the gas works, buildings, machinery, apparatus, pipes, materials, appurtenances, meters, fixtures, personal and other property of whatsoever kind or description, situated and being in and upon the premises above described, or situated elsewhere in the said city of Memphis, and in anywise belonging or appertaining to said company or connected with said gas works, and all the right, title, interest and estate to the extent aforesaid of the said T. A. Nelson, either in law or equity,

of, in, and to the said premises and property, to the extent aforesaid; together with all the privileges and appurtenances to the same belonging or in anywise appertaining, to have and to
51 hold the same to the only proper use of the said James H. Pepper, his heirs and assigns forever; and the said S. A. Nelson, for himself, his heirs, executors, administrators and assigns, doth covenant with said James H. Pepper, his heirs and assigns, that he has good right and lawful authority to sell the same; that the title so conveyed is clear, free, and unincumbered by any act of said Nelson, and that he will warrant and defend the same unto said James H. Pepper, against all claims whatever, by, through and under him, his heirs and assigns; provided always, that this conveyance is made upon condition that the said T. A. Nelson shall pay, or cause to be paid, unto the said James H. Pepper, his legal representatives or assigns, his certain promissory note obligation, according to the tenor and effect thereof, a copy of which is as follows, to wit:

$5,000 MEMPHIS, TENN., *Jan. 11th*, 1861.

For value received I promise to pay to the order of James H. Pepper the sum of five thousand dollars, with int., at the rate
52 of six per cent. per annum, from date until paid, out of the nett receipts of earnings on the sum of five thousand dollars of the capital stock of the Memphis Gas Light Company, of the city of Memphis, Tennessee, said sum and interest being payable in quarter annual installments, the interest being first paid and the balance applied upon the principal, which said installments shall amount to such sums of money as shall be equal to the quarterly nett receipts of earnings on five thousand dollars of the capital stock of said company, this note and obligation being given for the purchase money of five thousand dollars of the capital stock of said company sold and transferred to me by said Pepper, and if I fail to pay any of said installments quarterly as aforesaid, after the receipt by said company of said nett earnings, then the full sum of five thousand dollars, with interest less interest and installments paid, shall
53 become due and payable.

[SEAL.] T. A. NELSON.

Then these presents shall be void; otherwise remain in full force and virtue.

In witness whereof I, the said , have hereunto set my hand and seal this 20th day of July, in the year eighteen hundred and sity-one.

[SEAL.] T. A. NELSON.

STATE OF TENNESSEE, *Shelby County:*

Personally appeared before me, John P. Treazevant, clerk of County Court of said county, T. A. Nelson, the bargainer to the foregoing and hereto attached mortgage, with whom I am personally ac-

quainted, and who acknowledged that he executed the same for the purposes therein contained.

Witness my hand at office, this 20th day of July, 1861.

JOHN P. TREAZEVANT, *Clerk*,
By W. H. LAKE, *D. C.*

54 STATE OF TENNESSEE, *Shelby County*:

The foregoing mortgage, together with the clerk's certificate thereon endorsed, was this day duly recorded in my office, in book in No. 48, pages 470, 471 and 472. July 26th, 1861.

JAS. W. KING, *Register*.

For value received I assign the within mortgage to Thompson Dean.

JAMES H. PEPPER.

Exhibit "C."

$15,400. MEMPHIS, *July 20th*, 1861.

For value received I promise to pay to the order of James H. Pepper the sum of fifteen thousand and four hundred dollars, with interest, at the rate of six per cent. per annum from date until paid, out of the net receipts of earnings on the sum of fifteen thousand and four hundred dollars of the capital stock of the Mem-
55 phis Gas Light Company, of the city of Memphis, Tennessee, said sum and interest being payable in quarter annual installments, the interest being first paid and balance of said nett receipts then to be applied upon the principal, which said installments shall amount to such sums of money as shall be equal to the quarterly nett receipts of earnings on fifteen thousand four hundred dollars of the capital stock of said company. This note and obligation being given for the purchase money of fifteen thousand and four hundred dollars of the capital stock of said company sold and transferred to me by said Pepper, and if I fail to pay any of said installments quarterly as aforesaid after the receipt by said company of said nett earnings, then the full sum of fifteen thousand and four hundred dollars, with interest less interest and installments paid, shall become due and payable.

T. A. NELSON.

56 *Exhibit D.*

Know all men by these presents, that T. A. Nelson, of the city of Memphis, in the State of Tennessee, in consideration of fifteen thousand and four hundred dollars to him paid by James H. Pepper, the receipt whereof is hereby acknowledged, doth bargain, grant, sell, and convey unto said James H. Pepper, his heirs and assigns forever, the following real estate and other property, viz: So much of my undivided interest, right, title and estate in the property and prem-

ises of and belonging to the Memphis Gas Light Company (hereinafter described) as shall be represented by and is equal to fifteen thousand and four hundred dollars of the capital stock of said company at par, said real estate and property being described as follows, the same being situated in the city of Memphis, in the State of Tennessee, being all those certain lots, tracts, or parcels of ground
57 particularly described as follows, viz: block number four hundred and forty-eight and block number four hundred and forty-five (448 and 445) as known on the plan of said city of Memphis and bounded by Chickasaw street on the west, and by Hill street on the south, each lot fronting one hundred and forty-eight feet and six inches on Chickasaw street, and running back one hundred and forty-eight feet six inches from the same; also the two other certain pieces or parcels of ground known and designated on the plan of the city of Memphis aforesaid as lots number four hundred and forty-six (446) and four hundred and forty-seven, (447,) fronting two hundred and ninety-seven feet on Main street and running back west to the said lots above mentioned, and numbered four hundred and forty-eight and four hundred and forty-five, also my interest, right and title and estate to the extent aforesaid in the gas works, buildings, machinery, apparatus, pipes, materials, appurtenances, metres,
58 fixtures, personal and other property of whatsoever kind or description, situated and being in and upon the premises above described, or situated elsewhere in the said city of Memphis, and in anywise belonging or appertaining to said company or connected with said gas works, and all the right, title, interest and estate to the extent aforesaid of the said T. A. Nelson, either in law or equity, of in and to the said premises and property to the extent aforesaid, together with all the privileges and appurtenances to the same belonging or in anywise appertaining, to have and to hold the same to the only proper use of the said James H. Pepper, his heirs and assigns forever. And the said T. A. Nelson for himself, his heirs, executors, administrators, and assigns doth hereby covenant with said James H. Pepper, his heirs and assigns, that he has good right and lawful authority to sell the same; that the title so conveyed is clear, free, and unincumbered by any act of said T. A.
59 Nelson, and that he will warrant and defend the same unto the said James H. Pepper, against all claims by, through and under him, his heirs or assigns.

Provided always, and this conveyance is made upon condition, that if the said T. A. Nelson shall pay or cause to be paid unto the said James H. Pepper, his legal representatives or assigns, his certain promissory note and obligation, according to the tenor and effect thereof, a copy of which is as follows, to wit:

$15,400. MEMPHIS, TENN., *July* 20, 1861.

For value received, I promise to pay to the order of James H. Pepper the sum of fifteen thousand and four hundred dollars, with interest at the rate of six per cent. per annum from date until paid, out of the nett receipts of earnings on the sum of fifteen thousand

and four hundred dollars of the capital stock of the Memphis Gas Light Company, of the city of Memphis, Tennessee, said sum
60 and interest being payable in quarter annual installments, the interest being paid first, and balance of said nett receipts then to be applied upon the principal, which said installments shall am't to such sums of money as shall be equal to the quarterly nett receipts of earnings on fifteen thousand and four hundred dollars of the capital stock of said company, this note and obligation being given for the purchase money of fifteen thousand and four hundred dollars of the capital stock of said company, sold and transferred to me by said Pepper; and if I fail to pay any of said installments quarterly as aforesaid, after the receipt of said company of said nett earnings, then the full sum of fifteen thousand and four hundred dollars, with interest, less interest and installments paid, shall become due and payable.

[SEAL.] T. A. NELSON.

Then these presents shall be void; otherwise to remain in full force and virtue.

61 In witness whereof I, the said T. A. Nelson, have hereunto set my hand and seal this twentieth day of July, in the year eighteen hundred and sixty-one.

[SEAL.] T. A. NELSON.

W. H. S. July 20, '61.

Endorsed: For value received, I assign the within mortgage to Thompson Dean. James H. Pepper.

STATE OF TENNESSEE, *County of Shelby*:

Personally appeared before me, John P. Treazevant, clerk of County Court of said county, T. A. Nelson, the bargainer to the foregoing and hereto attached mortgage, with whom I am personally acquainted, and who acknowledged that he executed the same for the purposes therein contained.

Witness my hand at office this 20th day of July, 1861.

JOHN P. TREAZEVANT, *Cl'k*,
By WM. H. LAKE, *D. C.*

STATE OF TENNESSEE, *Shelby County*:

The foregoing mortgage, together with the clerk's certificate thereon endorsed, was this day duly recorded in my office, in book No. 48, pages 472 and 473, July 20th, 1861.

JAS. W. KING, *Register*.

62 *Exhibit "E."*

HEADQUARTERS DIST. OF MEMPHIS,
MEMPHIS, TENN., *April* 25, '63.

Special Orders, No. 247.

A civil commission is hereby organized for the district of Memphis, Tennessee, to hear and determine all complaints and suits instituted by loyal citizens of the United States for the collection of debts, the enforcement of contracts, the prevention of frauds, the recovery of the possession of property, real or personal, and generally to perform such duties and exercise such powers as can be done by a court deriving its powers from military authority.

The commission will adopt such rules and regulations for the transaction of business as may be found necessary, subject to the approval of the general commanding the district. All judgments, decrees and orders must be reported to the general commanding the districts for approval.

63 *Detail for the commission.*

1st. Capt. Barbour Lewis, 1st Missouri cavalry.

2nd. Judge Joseph Williams.

3d. A. C. Ketchum, esq'r. Lieut. John C. Grierson, 6th Illinois vol. cav.

The commision will meet in the Chancery Court room, in Memphis, on Monday, the 27th day of April, 1863, and hold its sessions without regard to hours.

By order of Brigadeir General James C. Veatch.

F. W. FOX,
Assistant Adjutant General.

Purpose and powers of the commission.

For the want of the usual courts of justice at Memphis, or vicinity, the commission is established to hear and determine as far as can be done by a court deriving its powers from military authority, all suits instituted by citizens of this or other States, but loyal to the gov-
64 ernment, for the collection of debts, the enforcement of contracts, the prevention of frauds, or the fraudulent removal, conversion or disposition of property, money or choses in action; the settlement of disputes between partners and joint owners of property, and sharers in the profits and losses in joint business undertakings, the preservation of the assetts of estates, the adjudication of controversies between landlords and tenants, and of disputed rights of possession of both real and personal property; and generally, as far as can be done in a state of war, to adjust all such controversies between private parties as are necessary to be adjusted for the security of property, and the good order and regulation of society.

Rules.

1. In conducting the business of the commission, the pleadings shall be in the form of petitions and answers, sworn to, avoiding technicalities, and presenting as briefly as can be the real

points in dispute; and new parties may be made by petition and answers required as the merits of the case may demand so as to adjust the rights of all parties interested in the subject-matter of controversy.

2. Suits may be commenced by simply filing the petition with the recorder and giving bond for costs, whereupon notice will issue as of course for defendants to appear and answer within three days after service of the notice; but where extraordinary process, such as seizures or attachment of goods, choses in action or money in in transitu, in hands of depositaries, agents or factors, injunctions or restraints upon the means, business or doings and actings of defendants or other persons is desired, application must be made in writing to the commission while in session, or to one more members, when not in session, by whom orders or fiats for such extraordinary process will be made when equity and substantial justice seem prima facie to require it, addressed to the recorder, to be issued upon bond being given with sufficient security to cover all damages to the defendants or other persons, caused by the wrongful sueing out of such process. Non-residents and absent defendants may be brought into court by publication and pro confesso be taken, or process of contempt be had for failing to appear and answer as nearly as convenient, according to the practice of courts of equity in Tennessee.

3. All testimony taken before the commission while in session will be oral, but the commission may, when deemed necessary, appoint a suitable person to reduce the testimony in the case to writing and make report thereof at such time as may be designated. Depositions may be taken according to the practice of the civil courts of the State of Tennessee, to be used as evidence in the trial of any case pending. If either party desires the evidence of any witness brought before the commission to be in writing, it may be done by the commission sending the witness before a justice of the peace, or commissioner appointed for the purpose, without delaying the trial of causes by the writing down of testimony during such trial; the party making the application paying the extra expenses of having the testimony so taken. The commission has power to direct terms and notice on which depositions may be taken at a distance.

4. The commission will keep a correct record of all interlocutory and final orders, judgments and decrees, filing the pleadings and written testimony, and sending correct transcripts of the pleadings and interlocutory fiats and orders, and final order, judgment or decree in each case as speedily as possible after trial to the commanding general of the district for his approval or final order, and for the same to be executed.

5. Reasonable compensation for the services of the members of the commission, the clerks and all other persons necessarily employed in conducting its business, will be assessed and charged by the recorder as costs, in each case to be charged to the losing party or divided between the parties, as the commission shall in such case direct, according to the merits, subject to the approval of the commanding general.

6. The commission may from time to time, as seems needful, make rules for conducting its business, and the preparation and trial of causes not inconsistent herewith, nor with the military rules and regulations of the district or department, making the modes of proceeding as simple and free from technicalities as can be for the attainment of substantial justice and equity, and making the remedies applied as near as can be done according to the laws and rules and practice of the courts of Tennessee.

7. The commission may punish for contempt or breaches of the peace or of good order in its presence while in session, or in
69 other cases requiring it, by fine or imprisonment, or both, at its discretion; also for contumaciously refusing to perform its orders and decrees, interlocutory or final.

8. None but those who are loyal to the government will be permitted to practice as attorneys or counsellors before the commission.

9. On the petition of loyal parties interested the process, orders, judgments and proceedings of judicial, ministerial or other officers of the State, county or city, or persons now assuming to exercise the functions of such officers, may be reviewed and examined, and when substantial justice and right require it, the same will be by the commission suspended, modified or annulled and set aside; and the commission in all proper cases will proceed to hear and determine the merits and adjudge the remedies, the same as if the cases or suits had been first instituted before the commission.

10. In any case where it is necessary that process for the
70 arrest of the person or seizure of the property of a party shall be issued by the commission if any officers of the commission shall divulge the fact of such issuance to any person or persons, besuch arrest or seizure shall be made, the same shall be deemed a contempt of law and shall be punished as such.

11. Costs shall be charged in this commission until otherwise ordered, at rates double those prescribed in similar cases, as near as may be, in the code of Tennessee; but such additional charge may be made in each case as shall be deemed necessary.

12. No attorney practicing before the commission shall be security on any bond for costs or otherwise in any case here pending.

13. When by the answer of the defendant new matter is alleged in avoidence of the allegations of the plaintiff's petition, he
71 shall be allowed three days' time to file his answer thereto.

Ordered, That the above and foregoing rules be and are adopted for the practice of this commission, subject to the approval of the commander of this military district.

JOSEPH WILLIAMS,
BARBOUR LEWIS,
A. C. KETCHUM,
Com'ss'rs.

Attest: JOHN C. GRIERSON, *Recorder.*

Examined and approved—

JAMES C. VEATCH,
Brig. Gen.

72 Civil commission for district of Memphis.

Exhibit F.

STATE OF TENNESSEE, *Shelby County:*

Be it remembered that on the 1st day of September, 1863, Thompson Dean filed his certain petition herein against Thomas A. Nelson, Meraim W. Nelson, and Benjamin May, which together with the proceedings had therein and in the words and figures following, to wit:

Original petition.

THOMPSON DEAN
vs.
THOMAS A. NELSON, MERAIM W. NELSON, BENJAMIN MAY.

No Service of Process —

DEPARTMENT OF MEMPHIS,
State of Tennessee, City of Memphis:

Before the civil commission; Captain Barbour Lewis, judge; Joseph Williams, A. C. Ketchum, esqr., commissioners.

The petition of Thompson Dean, a loyal citizen of the State
73 of Ohio, showeth, that on the 11th day of June, 1861, James H. Pepper, being owner thereof, sold and assigned on the books of the Memphis Gas Light Company fifty shares of capital stock of said company to T. A. Nelson, for the sum of five thousand dollars, by an instrument in writing in the words following, to wit:

"For value received, I hereby transfer and assign to T. A. Nelson fifty shares in the capital stock of the Memphis Gas Light Company, which have been paid in full.

"In witness whereof I have hereunto set my hand the 11th day of June, 1861.

(Signed) "JAMES H. PEPPER."

The said company having been incorporated by act of the general assembly of the State of Tennessee, entitled An act to incorporate the Memphis Gas Light Company, approved November 20th, 1851, the par value of each share of the capital stock of said company being the sum of one hundred dollars. And petitioner says that in part the purchase money of said stock was not paid, but the
74 same was sold on a credit as hereinafter set forth; and the said Nelson on the day said assignment was made to him to secure the said purchase money thereof at said city, made and delivered to said James H. Pepper a promissory note or obligation under seal for the said sum of five thousand dollars, with interest at the rate of six per cent. per annum from date, a copy of which note or obligation is herewith filed, marked A, and made a part of this petition; and afterwards to wit, on the 20th day of July, 1861, to secure the payment of said note as said city, executed and delivered

to said Pepper a mortgage on all the interest of said Nelson in said company represented by said fifty shares of stock, a copy of which mortgage, which was duly recorded in the office of the register of the county of Shelby in said State, on the 26th day of July, 1861, with the endorsements thereon, is herewith filed and made part of this petition, marked "B."

He further says, that on the 20th day of July, 1861, the said Pepper sold to the said Nelson one hundred and fifty-four
75 shares of the capital stock of the said company, and assigned the same to him on the books thereof for the sum of fifteen thousand and four hundred dollars, being the par value of said stock, the instrument of assignment being of the tenor and effect as that above set forth, except as to the number of shares and date. And to secure the payment of the purchase money of said one hundred and fifty-four shares of stock, no part thereof being paid, the said Nelson made and delivered to said Pepper at said city, a promissory note in writing or obligation under seal of the same tenor and effect except as to amount as that before mentioned, and also a mortgage of the same tenor and effect except as to amount, as the mortgage hereinbefore referred to, and both bearing date July 20th, 1861, to secure the payment of said sum of fifteen thousand and four hundred dollars, with interest at the rate of six per cent. per annum, which last-mentioned mortgage was duly recorded in the office aforesaid on the 26th day of July, 1861, a copy of which last-mentioned note
76 or obligation, marked "C," and of said mortgage, with the endorsement thereon, marked "D," are herewith filed and made a part of this petition, the said notes and the said mortgages being exactly of the same tenor and effect, except as to the dates of said notes and amount of money specified in the respective instruments.

And the said petitioner avers that by the terms, tenor and effect of said notes and mortgages, the said sums of money respectively were to be paid out of the nett quarter earnings of the amounts or shares aforesaid of said capital stock, the interest to be first paid, and the residue of each quarterly dividend on said stock to be applied to the payment of the principal. But if the said Nelson failed to pay to said Pepper any instalment of one amount equal to the net quarterly earnings of said amounts respectively of said capital stock, after the receipt of such quarterly earnings by said company, the whole of the sums of money mentioned in said notes and mortgages respect-
77 ively became due and payable; and said petitioner further avers that on the 17th day of December, 1861, there had accrued of the net earnings of said stock mentioned in said two notes, that is to say, on the amount of the said capital stock represented by said sums of money in said notes mentioned, (in sums proportionate to the amounts in each note mentioned,) the aggregate sum of sixteen hundred and seventy-two dollars, (being two quarterly dividends on the amounts of said capital stock in said notes mentioned,) and on the 17th day of March, 1862, the sum of two thousand and forty dollars accrued in like manner, being the net earnings of said

amount of said capital stock for one quarter, which sums of moneys on the days respectively aforesaid, and prior to said times, had been received by said company as the nett earnings of said amounts, of said stock, which sums of money were at the times respectively aforesaid received by the said Nelson from said company as
78 such net earnings. And the petitioner avers further, that the said Nelson did not pay the said sums of money so received or amounts equal thereto to said Pepper, or any part thereof, or to said petitioner, but wholly failed and neglected so to do, and the said sums of money in said notes mentioned and each of them, and every part thereof, and all interest thereon accrued, still remain wholly unpaid. Wherefore the said petitioner says, that the whole of said sums of money on said notes and mortgages mentioned are now and have been long since due and payable, and all interest thereon accrued according to the tenor and effect of said notes or obligation and the conditions thereof.

Said petitioner further says that on the day of 186 , the said James H. Pepper, by endorsement on said notes and obligations, respectively, in writing, assigned the same to said petitioner, and then delivered the same for value received, together with said two mortgages to said petitioner, who is now the bona fide
79 holder thereof.

He further says, that the stock in said company is personal property and is transferable, by assignment, on the books of said company; that the title of the real estate described in said mortgages, is in said company, as a corporation, were meant and intended to be by said parties, are in fact and in effect, only mortgages in that portion of the capital stock of said company, in said mortgages and notes respectively mentioned.

The said petitioner further says, that on the 20th day of March, 1862, the said Nelson, on the books of said company, assigned ten shares of said stock to one Ben. May, with the following conditions, to wit: Transferred subject to the provisions of a mortgage made by me, which is on record in the register's office of Shelby county, Tennessee. And afterwards, on the 26th day of April, 1862, the said Nelson transferred and assigned on the books of said company,
80 to Miraim W. Nelson, his wife, the residue of said stock, to wit, one hundred and ninety-four shares, under the following conditions, indorsed on the said transfer or instrument of assignment, to wit: This transfer is made subject to the provisions of a mortgage made by me, which is on record in the register's office of Shelby county, Tennessee; the said Nelson thereby referring to the said mortgages executed by him to said Pepper, being the only mortgages on said stock. And the said petitioner says that both of said assignments were made after the amounts mentioned in said notes and mortgages had become due by the failure of the said Nelson to perform the conditions thereof; and he further says, that neither said Ben. May and said Miraim W. Nelson, have paid to the said Pepper, or to said petitioner, any part of either of said sums of money, or any interest thereon accrued.

He makes the said T. A. Nelson, Miraim W. Nelson, his
81 wife, and Benjamin May, defendants to this petition, and prays that they may be required to answer the same.

The said petitioner therefore prays that payment be rendered in his favor, against the said T. A. Nelson, for the amount due said notes or obligations, to wit, twenty thousand and four hundred dollars and interest thereon accrued for the foreclosure of said mortgages on the said two hundred and four shares in the capital stock of said company, and for the sale thereof to pay the amount found due him as aforesaid, and costs and interest accruing; or that the stock may be assigned to him by the judgment of the court, at its par value, in satisfaction to that extent, of petitioner's debt, and he prays for all other, further or different relief which justice may require in the premises.

THOMPSON DEAN, *Petitioner*.
By WM. T. HOLMAN, *Att'y*.

82 *Affidavit.*

STATE OF OHIO, *Hamilton Co., City of Cincinnatti, sct*:

Before me, the undersigned, a notary public of said county, this day personally came Thompson Dean, the foregoing petitioner, of lawful age, who, being by me duly sworn, deposeth and saith: that the foregoing petition is true in substance and matter of fact. He further says that he is a true and loyal citizen of the State of Ohio and the United States; and has always borne true allegiance to the government of the United States, and further saith not.

THOMPSON DEAN.

Subscribed and sworn to before me on the 17th day of August, 1863, as witness my hand and notarial seal at Cincinnatti.

[SEAL.] ALEX. B. HUSTIN,
Notary Public.

Exhibit "A" to plff. petition.

$5,000 00. MEMPHIS, TENNESSEE,
June 11th, 1861.

For value received, I promise to pay to the order of James
83 H. Pepper the sum of five thousand dollars, with interest at the rate of six per cent. per annum, from date until paid, out of the net receipts of earnings on the sum of five thousand dollars of the capital stock of the Memphis Gas Light Company of the city of Memphis, Tennessee; said sum and interest being payable in quarter annual instalments, the interest being first paid and balance of said nett receipts then to be applied upon the principal, which said instalments shall amount to such sums of money as shall be equal to the quarterly nett receipts of earnings on five thousand dollars of the capital stock of said company. This note and obligation being given for the purchase money of five thousand dollars of the capital stock

of said company, sold and transferred to me by said Pepper; and if I fail to pay any of said instalments quarterly, as aforesaid,
84 after the receipt by said company of said nett earnings, then the full sum of five thousand dollars with interest, less interest and installments paid, shall become due and payable.

[SEAL.] T. A. NELSON.

Endorsed: For value received I assign the within note and obligation to Thompson Dean. (Signed) James H. Pepper.

Exhibit B to pl'f petition.—Mortgage.

Know all men by these presents, that T. A. Nelson, of the city of Memphis, in the State of Tennessee, in consideration of five thousand dollars to him paid by James H. Pepper, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell and convey unto said James H. Pepper, his heirs and assigns forever, the following real estate and other property, viz: so much of my individual
85 interest, right, title and estate in the property and premises of and belonging to the Memphis Gas Light Company, (hereinafter described,) as shall be represented by and equal to the five thousand dollars of the capital stock of said company at par; said real estate, property and premises being described as follows: the same being situated in the city of Memphis, in the State of Tennessee, being all those certain lots, tracts, or parcels of ground particularly described as follows, viz: block number four hundred and forty-eight, and block four hundred and forty-five, (448 and 445,) as known on the plan of said city of Memphis, and bounded by Chickasaw street on the west, and by Hill street on the south, each lot fronting one hundred and forty-eight feet and six inches on Chickasaw street, and exteuding back one hundred and forty-eight feet and six inches from the same. Also two other pieces or parcels of ground, known and designated on the plan of said city of Memphis, as lots number four hundred aud forty-six (446) and four hundred and 47,
86 (447,) fronting two hundred and ninety-seven feet on Main street, and running back west to the said lots above mentioned, and numbered four hundred and forty-eight, and four hundred and forty-five; also my interest, right, title and estate to the extent aforesaid in the gas works, buildings, machinery, apparatus, pipes, materials, appurtenances, meters, fixtures, personal and other property of whatever kind or description, situated and lying in and upon the premises above described, or situated elsewhere in the said city of Memphis and in anywise belonging or appertaining to said company, or connected with said gas works; and all the right, title, interest and estate to the exent aforesaid of the said T. A. Nelson, either in law or equity of, in and to the said premises and property to the extent aforesaid, together with all the privileges and appurtenances to the same belonging, or in anywise appertaining, to
87 have and to hold the same to the only proper use of the said James H. Pepper, his heirs and assigns forever, and the said

T. A. Nelson for himself, his heirs, executors, administrators and assigns doth covenant with said James H. Pepper, his heirs and assigns, that he has good right and lawful authority to sell the same; that the title so conveyed is clear, free and unincumbered by any act of said Nelson, and that he will warrant and defend the same unto said James H. Pepper against all claims whatever, by, through, or under him, his heirs or assigns; provided always, and this conveyance is made upon condition that the said T. A. Wilson shall pay, or cause to be paid unto the said James H. Pepper, his legal representatives or assigns, his certain promissory note and obligation according to the tenor and effect thereof; a copy of which is as follows, to wit:

$5,000 00. MEMPHIS, TEN., *June 11th*, 1861.

For value received, I promise to pay to the order of James H. Pepper, the sum of five thousand dollars, with interest at the
88 rate of six per cent. per annum from date until paid out of the net receipts of earnings on the sum of five thousand dollars of the capital stock of the Memphis Gas Light Company, of the city of Memphis, Tennessee, said sum and interest being payable in quarter annual instalments, the interest being first paid, and the balance applied upon the principal, which said instalment shall amount to such sums of money as shall be equal to the quarterly net receipts of earnings on five thousand dollars of the capital stock of said company. This note and obligation being given for the purchase money of five thousand dollars of the capital stock of said company, sold and transferred to me by said Pepper; and if I fail to pay any of said iustallments quarterly as aforesaid, after the receipt of
89 said company of said net earnings, then the full sum of five thousand dollars with interest, less interest and instalments paid, shall become due and payable.

[SEAL.] T. A. NELSON.

Then these presents shall be void; otherwise to remain in full force and virtue.

In witness whereof I, the said , have hereunto set my hand and seal the 20th day of July, in the year eighteen hundred and sixty-one.

[SEAL.] T. A. NELSON.

STATE OF TENNESSEE, *County of Shelby*:

Personally appeared before me, John P. Treazavant, clerk of connty court of said county, T. A. Nelson, the bargainer in the foregoing and hereto attached mortgage, with whom I am personally acquainted, and who acknowledged that he executed the same for the purposes therein contained.

Witness my hand this 20th day of July, 1861.

JOHN P. TREAZAVANT, *Cl'k*,
By W. H. LAKE, *D. C.*

90 STATE OF TENNESSEE, *Shelby County*:

The foregoing mortgage, together with the clerk's certificate thereon endorsed, was this day duly recorded in my office, in book No. 48, pages 470. 471, 472.

July 26th, 1861.

JAMES W. KING, *Register*.

Assignment.

Indorsed: For value received I assign the within mortgage to Thompson Dean.

(Signed) JAMES H. PEPPER.

Exhibit "C" to pl'ff petition.—Note or obligation.

$5,000. MEMPHIS, TENNESSEE, *July* 20, 1861.

For value received I promise to pay to the order of James H. Pepper the sum of fifteen thousand and four hundred dollars, with interest at the rate of six per cent. per annum from date, until paid out of the receipts of earnings in the sum of fifteen thousand and
91 four hundred dollars of the capital stock of the Memphis Gas Light Company of the city of Memphis, Tennessee; said sum and interest being payable in quarter annual instalments, the interest being first paid, and balance of said net receipts then to be applied upon the principal; which said instalment shall amount to such sum of money as shall be equal to the quarterly nett receipts of earnings on fifteen thousand and four hundred dollars of the capital stock of said company. This note and obligation being given for the purchase-money of fifteen thousand and four hundred dollars of the capital stock of said company sold and transferred to me by said Pepper; and if I fail to pay any of said instalments quarterly as aforesaid, after the receipt by said company of said net earnings, then the full sum of fifteen thousand and four hundred dollars, with interest, less interest and instalments paid, shall become due and payable.

[SEAL.] T. A. NELSON.

92 Endorsed: For value received I assign the within note and obligation to Thompson Dean.

(Signed) JAMES H. PEPPER.

Exhibit "D" to pl'ff petition.—Mortgage:

Know all men by these presents that T. A. Nelson, of the city of Memphis, in the State of Tennessee, in consideration of fifteen thousand and four hundred dollars to him paid by James H. Pepper, the receipt whereof is hereby acknowledged, doth bargain, grant, sell and convey unto said James H. Pepper, his heirs and assigns forever, the following real estate and other property, viz: so much of any undivided interest, (right,) title and estate in the property and premises of and belonging to the Memphis Gas Light Company (here-

inafter described) as shall be represented by and is equal to fifteen thousand and four hundred dollars of the capital stock of said company at par, said real estate and property being described as follows:

93 The same being situated in in the city of Memphis, in the State of Tennessee, being all those certain lots, tracts, or parcels of ground particularly described as follows, viz: Block No. four hundred and forty-eight, and block number four hundred and forty-five (448 and 445,) as known on the plan of said city of Memphis, and bounded by Chickasaw street and the west, and by Mill street on the south, each lot fronting one hundred and forty-eight feet and six inches on Chickasaw street, and running back one hundred and forty-eight feet six inches from the same; also two other certain pieces or parcels of ground known and designated on the plan of the city of Memphis aforesaid as lots numbered four hundred and forty-seven (446,) and four hundred and forty-seven (447,) fronting two hundred and ninety-seven on Main street, and running back west to the said lots above mentioned, and numbered four hundred

94 and forty-five and four hundred and forty-eight; also my interest, right, title and estate, to the extent aforesaid, in the gas works, buildings, machinary, apparatus, pipes, materials, appurtenances, meters, fixtures, personal and other property of whatsoever kind or description, situated and being in and upon the premises above described, or situated elsewhere in the said city of Memphis, and anywise belonging or appertaining to said company or connected with said gas works, and all the right, title, interest and estate, to the extent aforesaid, of the said T. A. Nelson, either in law or equity, of, in and to the said premises and property to the extent aforesaid; together with all the privileges and appurtenances to the same belonging or in any wise appertaining; to have and to hold the same to the only proper use of the said James H. Pepper, his heirs and assigns forever. And the said T. A. Nelson, for

94 himself, his heirs, executors, administrators and assigns, doth hereby covenant with said James H. Pepper, his heirs and assigns, that he has good right and lawful authority to sell the same; that the title so conveyed is clear, free and unincumbered by any act of T. A. Nelson, and that he will warrant and defend the same with the said James H. Pepper against all claims by, through or under him, his heirs or assigns. Provided always, and this conveyance is made upon condition, that if the said T. A. Nelson shall pay or cause to be paid unto the said James H. Pepper, his legal representatives or assigns, his certain promissory note and obligation according to the tenor and effect thereof, a copy of which is as follows, to wit:

$15,400. MEMPHIS, TENN., *July* 20, '61.

For value received I promise to pay to the order of James H. Pepper the sum of fifteen thousand four hundred dollars, with interest at the rate of six per cent. per annum from date until paid,

96 out of the net receipts of the earnings on the sum of fifteen

thousand and four hundred dollars of the capital stock of the Memphis Gas Light Company, of the city of Memphis, Tennessee, said sum and interest being payable in quarter annual instalments, the interest being paid first, and balance of said net receipts then to be applied upon the principal, which said installment shall amount to such sums of money as shall be equal to the quarterly net receipts of earnings on fifteen thousand and four hundred dollars of the capital stock of said company. This note and obligation being given for the purchase money of fifteen thousand and four hundred dollars of the capital stock of said company, sold and transferred to me by said Pepper, and if I fail to pay any of the said instalments quarterly, as aforesaid after the receipt by said nett earnings, then the full sum of fifteen thousand and four hundred dollars, with less interest and installments paid, shall become due and payable.

[SEAL.] T. A. NELSON.

97 Then these presents shall be void, otherwise to remain in full force and virtue.

In witness whereof, I, the said T. A. Nelson, have hereunto set my hand and seal this twentieth day of July, in the year eighteen hundred and sixty-one.

[SEAL.] T. A. NELSON.

STATE OF TENNESSEE, *County of Shelby*:

Personally appeared before me, John P. Treazevant, clerk of County Court of said county, T. A. Nelson, the bargainer to the foregoing and hereto attached mortgage, with whom I am personally acquainted, and who acknowledged that he executed the same for the purposes therein contained.

Witness my hand at office this 20th day of July, 1861.

JOHN P. TREAZEVANT, *Clerk*,
By WM. H. LAKE, *D. C.*

98 STATE OF TENNESSEE, *Shelby County*:

The foregoing mortgage, together with the clerk's certificate thereon endorsed, was this day duly recorded in my office in book number (28,) pages 472 and 473, July 20, 1861.

JAMES W. KING, *Register*.

Assignment.

Endorsed: For value received I assign the within mortgage to Thompson Dean.

(Signed) JAMES H. PEPPER.

Endorsed: This mortgage was filed in my office for registration on the 22nd day of July, 1861, at 10 o'clock a. m., and so noted in note book No. 5, page 44.

JAMES W. KING, *Register*.

And afterwards, to wit, on the 1st day of September, 1863, the following summons was issued herein, to wit:

Civil Commission, district of Memphis.

Summons.

99 To the marshal of civil commission, greeting:

You are hereby commanded to summon T. A. Nelson, Miraim Nelson and Benjamin May, if to be found in the district of Memphis, personally to be and appear before the civil commission of the district [of the district] of Memphis, within three days, at the court-room, then and there to answer the petition of Thompson Dean. Herein fail not and have you then and there this writ.

Witness John C. Greerson, received at court-room, 1st day of September, 1863.

JOHN C. GREERSON, *Recorder.*

Bond for costs.

I acknowledge myself the above-named petitioners security and bind myself to defendant in the sum of two hundred and fifty dollars ($250 00) for prosecuting this suit with effect, or payment of all costs and damages incident thereto.

Witness my hand and seal this 1st day of September, 1863.

[SEAL.] JOHN W. LEFTWICH.

100 *Marshal's return.*

Endorsed: Issued 1st day of Sept., 1863.

J. C. GREERSON, *Recorder.*

Came to hand the 1st day of Sept., 1863. T. A. Nelson and B. May not found in my district. Sept. 3, 1868.

B. SEARCY, *Marshal.*
By H. A. ROBERTSON,
Dept. Marshal.

Civil commission for the district of Memphis.

THOMPSON DEAN *vs.* T. A. NELSON. } No. 503.

The defendant in this case will take notice that it appears from the return of the marshal of this commission, that the defendant, T. A. Nelson, Miraim Nelson and Benjamin May, are non-residents of the district of Memphis. It is ordered that publication be made once a week for four successive weeks, requiring said defendants to enter their appearance in this case on or before the 8th day of October,

1863, and plead, answer or demur to the plaintiff's petition, or
101 the same will be taken for confessed and set for hearing ex parte.

JOHN C. GRIERSON,
W. S. HOLMAN,
Att'y for Pl'ff.

Civil Commission, State of Tennessee, district of Memphis.

Proof of Publication.

THOMPSON DEAN
vs.
T. A. NELSON, MIRAIM NELSON and Benjamin May.

Personally appeared before me, John C. Greerson, recorder of said commission, William G. Fitch, Jr., of lawful age, who being by me duly sworn, makes oath and says: That the pendancy of the above-entitled action, a copy of which notice is above hereunto attached, was published once a week for four consecutive weeks, commencing on the 8th day of September, 1863, and ending on the 29th day of September, 1863, in Memphis Bulletin, a daily newspaper of general circulation, printed and published in the city of Memphis, in the
102 county of Shelby and State of Tennessee. He further says, that he, the said affiant, has no interest in the above-entitled suit. He further says, that said publications of said notice were made on the 8th, 17th, 23d, 29th day of September, 1863, and further saith not.

W. H. FITCH, JR.

Subscribed and sworn to before me this 9th day of October, 1863.
JOHN C. GREERSON, *Recorder.*

Endorsed: Filed 9th Oct., 1863. J. C. Greerson, Recorder.

And afterwards on the 12th day of Oct., 1863, the following judgment was rendered herein, to wit:

Civil Commission, District of Memphis.

Petition.

THOMPSON DEAN
vs.
THOMAS A. NELSON, MIRAIM W. Nelson and Benjamin May.

Now comes the said plaintiff, Thompson Dean, and proves
103 to the satisfaction of court by competent testimony, that the said defendant Thompson A. Nelson, Miraim W. Nelson and

Benjamin May, (as to all of whom the original summons issued in the action had been duly retnrned, not found in the district of Memphis, by the proper officer,) have been duly notified of the pendency of this case, by notice duly published once a week for four consecutive weeks, in the Memphis Bulletin, a newspaper of general circulation, printed and published daily in the city of Memphis in the State of Tennessee, prior to the 8th of October, 1863, on or before which day, they the said defendants were required and notified by said notice, so as aforesaid published, to enter their appearance in this case and plead, answer or demur to the said plaintiff's petition, or the same would be taken for confessed, and set for hearing ex parte. And it being also proved to the satisfaction of the court that all of the said de-
104 fendants were at the time of the commencement of the suit, and are still, non-residents of the State of Tennessee, and disloyal to the government of the United States; and the said defendants and each of them having failed to appear in the case; now on this the 12th day of October, 1863, on motion of tho plaintiff, they and each of them are three times audibly called but come not, and herein wholly make default, and on motion of said plaintiff,
105 the cause is set down for hearing. And the evidence being heard, the court find that the allegations in said petition set forth are true, and that the sums of money specified in the said two promissory notes in said petition maintained, are now due and payable by the terms and conditions of said notes, and the default of said Thomas A. Nelson. The court further find, that there is now due to the said plaintiff, from the said Thomas A. Nelson, the sum of twenty-three thousand one hundred and sixty-one dollars and ninety-one cents, and interest accrued of said notes, and that the said mortgages were duly executed by said Thomas A. Nelson, and delivered to the said James H. Pepper on the said two hundred and four shares of the capital stock of the Memphis Gas Light Company of the city of Memphis, in the State of Tennessee, to secure the payment of
105½ the sum of money in said notes specified, the par value of each of said shares being one hundred dollars; the said stock having been purchased by the said Thomas A. Nelson from the said Pepper at its par value, and the said notes and mortgages made and executed to secure the purchase money thereof, and afterwards duly assigned by the said Pepper to the plaintiff. The court further finds, that after the said mortgages were duly recorded in the office of the register of the county of Shelby, in said State, and after default by the said Thomas A. Nelson in fulfilling the conditions of said notes and mortgages, and after the said sums of money became due and payable by reason of such default, he the said Thomas A. Nelson assigned one hundred and ninety-four shares of said stock to the said Miraim W. Nelson, his wife, and the other ten shares thereof to said May, on the books of said company, who received
106 said assignments respectively subject to the payment of the sums due thereon as aforesaid, and with full knowledge of the lien thereon aforesaid, and that no part of the purchase money of said stock had been paid.

It is therefore considered and adjudged by the court that the said plaintiff do recover of the said defendant, Thomas A. Nelson, the said sum of twenty-three thousand one hundred and sixty-one dollars and ninety-one cents, together with the further sum of one hundred and nineteen ($119 00) dollars, being his costs and charges in this behalf expended.

It is further ordered and adjudged by the court that unless the said defendants, or some of them, do forthwith pay to the said plaintiff the sums of money aforesaid, that their and each of their right in equity to redeem said stock shall be barred and foreclosed,
107 and the plaintiff be entitled to his execution or order of sale on this judgment and decree for the sale of the said two hundred and four shares in the capital stock of the Memphis Gas Light Company, to pay and discharge the sums due as aforesaid, together with accruing interest and costs; that such execution or order of sale be directed to the proper marshal of this commission, who shall proceed to advertise and sell at public auction the stocks aforesaid, as other personal property is sold on execution under the laws of the State of Tennessee, as to notice of the time and place of such sale, shall be made at the door of the court-room of this commission, in the city of Memphis, after ten days' notice of the time and place of such sale, and that he sell the stock to the highest bidder for the legal currency of the United States, and execute to the purchaser thereof an assignment of such stock, on the presentation of
108 which to the proper secretary of said Memphis Gas Light Company he shall transfer the said shares of stock so sold to the purchaser thereof on the proper books of said company, and the said marshal shall, after paying out of the proceeds of such sale the cost which may hereafter accrue, shall apply the residue thereof, or so much as may be necessary to the payment to the said plaintiff of the [the] am'ts so found due to him as aforesaid, with accruing interest; and if there shall still remain a surplus of such proceeds (inasmuch as it is shown to the court that all of said defendants have gone within the lines of persons now in arms against the government,) the said marshal is ordered to pay the same to the recorder of this court, to abide the further order of the court.

All of which is finally ordered and adjudged in the premises.

109 BARBOUR LEWIS,
J. WILLIAMS,
A. C. KETCHUM,
Commissioners.

Attest:

JOHN C. GRIERSON,
Recorder.

And afterwards, to wit, on the 23d day of October, 1863, the following execution or order of sale was issued herein:

Civil commission.

Execution.

District of Memphis to the marshal, greeting:

Whereas, on the 12th day of October, A. D. 1863, in a cause then pending before the said civil commission, wherein Thompson Dean was plaintiff, and Thomas A. Nelson, Miraim W. Nelson, and Benjamin May were defendants, the following decree was pronounced by the said civil commission, which has been fully approved, as ap-
110 pears by the records of said civil commission, to wit:

Civil commission, district of Memphis.

Petition.

THOMPSON DEAN
vs.
THOMAS A. NELSON, MIRAIM W. NELSON and BENJAMIN MAY.

Now comes the said plaintiff, Thompson Dean, and proves to the satisfaction of the court, by competent testimony, that the said defendants, Thomas A. Nelson, Miriam W. Nelson and Benjamin May, (as to all of whom the original summons issued in this action had been duly returned "not found" in the district of Memphis by the proper officer,) have been duly notified of the pendency of this case by notice duly published once a week for four consecutive weeks in the Memphis Bulletin, a newspaper general circulation printed
111 and published daily in the city of Memphis, in the State of Tennessee, prior to the 8th day of Oct., 1863, on or before which day they the said defendants were required and notified by said notice so as aforesaid, published, to enter their appearance in this case and plead answer or demur to the said plaintiffs' petition, or the same would be taken for confessed, and set up for hearing ex parte; and it being also found to the satisfaction of the court that all of the said defendants were at the time of the commencement of this suit, and still are, non-residents of the State of Tennessee, and disloyal to the government of the United States, and the said defendants and each of them having failed to appear in this case, now on this the 12th day of October, on motion of the plaintiff, they and each of them are three times audibly called but come not, and herein wholly make default, and on motion of said plaintiff this cause is set down
112 for hearing, and the evidence being heard the court find that the allegations in said petition set forth are true, and that the sums of money specified in the said two promissory notes in said peti-

tion mentioned are now due and payable by the terms and conditions of said notes, and the default of the said Thomas A. Nelson.

The court further finds that there is now due to the said plaintiff from the said Thomas A. Nelson the sum of twenty-three thousand one hundred and sixty-one dollars and ninety-one cents, being the aggregate of the principal in interest accrued of said notes.

And that the said mortgages were duly executed by the Thomas A. Nelson and delivered to the said James H. Pepper, on the said two hundred and four shares of the capital stock of the Memphis Gas Light Company of the city of Memphis, in the State of Tennessee, to secure the sums of money in said notes specified.

113 The par value of each of said notes bring one hundred dollars, the said stock having been purchased by the said Thomas A. Nelson from the said Pepper at its par value, and the said notes and mortgages made and executed to secure the purchase money thereof, and afterward duly assigned by the said Pepper to the plaintiff.

The court further finds that after the said mortgages were duly recorded in the office of the register of the county of Shelby, in said State, and after default of the said Thomas A. Nelson in fulfilling the conditions of said notes and mortgages, and after said sums of money became due and payable, by reason of such default he, the said Thomas A. Nelson, assigned one hundred and ninety-four shares of said stock to the said Miraim W. Nelson his wife, and the other ten shares thereof to said May, on the books of said company who received said assignments respectively, subject to the judgment of the sums due

114 thereon as aforesaid, and with full knowledge of the lien therein aforesaid; and that no part of the purchase money of said stock had been paid.

It is therefore considered and adjudged by the court that the said plaintiff do recover of the said defendant, Thomas A. Nelson, the said sum of twenty-three thousand one hundred and sixty-one dollars and ninety-one cents, together with the further sum of one hundred and nineteen dollars, ($119 00,) being his costs and charges in this behalf expended.

It is further ordered and adjudged by the court, that unless the said defendants, or some of them, do forthwith pay to the said plaintiff the sum of money aforesaid, that their and each of their right in equity to redeem said stock shall be barred and forever foreclosed, and the plaintiff be entitled to his execution or order of sale on this judgment and decree for the sale of the said two hundred and

115 four shares in the capital stock of the Memphis Gas Light Company, to pay and discharge the same, due as aforesaid, together with accruing interest and costs; that such execution or order of sale be directed to the proper marshal of the commission, who shall proceed to advertise and sell at public auction the stock aforesaid, as other personal property is sold on execution under the laws of the State of Tennessee, as to the notice of the time and place of such sale; that such sale shall be made at the door of the court-room of this commission, in the city of Memphis, after ten days' notice of the

time and place of such sale; and that he sell the stock to the highest bidder, for the legal currency of the United States, and execute to the purchaser thereof an assignment of such stock, on the presentation of which to the proper secretary of said "Memphis Gas
116 Light Company" he shall transfer the said shares of stock so sold to the purchaser thereof on the proper books of said company; and the said marshal shall, after paying out of the proceeds of such sale the costs which may hereafter accrue, shall apply the residue thereof, or so much as may be necessary, to the payment to the said plaintiff of the amount so found due to him as aforesaid, with accruing interest; and if there shall still remain a surplus of such proceeds, (inasmuch as it is shown to the court that all of said defendants have gone within the lines of persons in arms against the government of the United States,) the said marshal is ordered to pay the same to the recorder of this court, to abide the further order of the court.

All of which is finally ordered and adjudged in the premises.

(Signed) BARBOUR LEWIS,
J. WILLIAMS,
A. C. KETCHUM,
Commissioners.

Attest:

JOHN C. GRIERSON,
Recorder.

The decree of the committee in this case was duly approved
117 by Brig. General James C. Veatch, on the 21st day of October, 1863.

J. C. GRIERSON,
Recorder.

And whereas the said defendant wholly failed and neglected to pay to the plaintiff the said sums of money in said judgment and decree specified, or any part thereof, therefore you are hereby commanded that by the sale of said two hundred and four shares of the capital stock of the Memphis Gas Light Company, which you are commanded to advertise and sell in conformity with the judgment and decree aforesaid, you cause to be made the said sum of twenty-three thousand one hundred and sixty-one dollars and ninety-one cents ($23,161 91) of debt; and also the said sum of one hundred dollars, ($119 00,) being the cost and charges by said plaintiff paid in said action, being the sums of money so by him recovered against the said defendant, Thomas A. Nelson, as appears by the record aforesaid, and also the costs and charges which may accrue herein in the execution
118 of said judgment and decree, including six dollars and fifty cents ($6 50) for costs accrued herein since the execution of said judgment, and in all things, in the advertisement and sale of said stock and the assignment thereof, and of the application of the proceeds thereof, be governed by the judgment and decree aforesaid.

Herein fail not and of this writ make due return.

Witness John C. Grierson, recorder of the civil commission in the of Memphis, this 23d day of October, 1863.

JOHN C. GRIERSON, *Recorder.*

And afterwards, to wit, on the the 23d day of Oct., 1863, the following notice of sale was made by the marshal herein:

Advertizement.—Marshal's sale

STATE OF TENNESSEE, *City of Memphis*:

By virture of an execution or order of sale to me directed from the honorable civil commission for the district of Memphis, I will
119 sell at public auction to the highest bidder, for cash in hand, at the door of the court room of said civil commission, No 281 Main street, in the city of Memphis, on the 14th day of November, 1863, between the hours of 10 a. m. and 4 p. m., on said day, the following described property, viz: Two hundred and four (204) shares of the capital stock of "the Memphis Gas Light Company," of the city of Memphis in said State, which said shares of the capital stock of said company I will sell at the time and place aforesaid, in obedience to the judgment and decree of said civil commission, rendered on the 12th day of October, 1863, in a cause wherein said Thompson Dean was plaintiff and Thomas A. Nelson, Miraim W. Nelson and Benjamin May were defendants, and the execution or order of sale to me directed founded on said judgment and decree. Taken as the property of said defendants, to satisfy said execution or order of sale.

B. SEARCY, *Marshal.*

Memphis, Tenn., *Oct.* 23*d*, '63.

Endorsed: Filed 23d Oct., 1863. J. C. Grierson, recorder.

120 And afterwards, to wit, on the 14th day of November, 1863, the following "marshal's return" was filed herein:

Civil commission, district of Memphis.

Marshal's return.

THOMPSON DEAN
vs.
THOMAS A. NELSON, MIRAIM NELSON and Benjamin May.

By virtue of an execution or order of sale, issued out of the Court of the Civil Commission for the district of Memphis, in the State of Tennessee, on the judgment or decree in the above-entitled cause, attested by John C. Grierson, esq., recorder of said commission, and directed to me, the undersigned marshal of said commission, bearing

date the 23d day of Oct., 1863, commanding me to sell two hundred and four (204) shares of the capital stock of "The Memphis Gas Light Company," I did as such marshal proceed to advertize
121 and sell the said shares of the stock of the Memphis Gas Light Company, and after giving due and legal notice of the time, place and terms of said sale in full conformity with the requirements of the execution or order of sale aforesaid, on the 14th day of November, 1863, between the hours of 10 a. m. and 4 p. m. of said day, at the door of the court room of said civil commission in the city of Memphis, in the State of Tennessee, being the time and place mentioned in said notice for the sale of said shares of stock, I offered the said two hundred and four shares (204) of stock for sale at public auction, and Alexander Hanlin having then and there offered and bid the sum of fifty-seven dollars ($57) per share for stock, being in the aggregate the sum of eleven thousand six hundred and twenty-eight dollars, ($11,628,) for said two hundred and four (204) shares of stock, and that being the highest bidder thereon, I did then and there openly strike off and sell the said two hundred and four (204) shares of stock to the said Alexander Hanlin, who thereupon paid
122 me the sum of eleven thousand six hundred and twenty-eight dollars ($11,628) in lawful currency of the United States, in full payment for said stock.

I do, therefore, in consideration of the premises aforesaid, and in obedience to the terms of the execution or order of sale aforesaid, and in pursuance of the terms of said sale, assign to the said Alexander Hanlin the said two hundred and four shares (204) [shares] of the capital stock of the "Memphis Gas Light Company," so by him purchased as aforesaid.

In witness whereof I have set my hand this 14th day of November, A. D. 1863.

BEVERLY SEARCY,
Marshal, Civil Commissioner for the Dist. of Memphis.

Endorsed: Filed Nov. 14, 1863. J. C. Grierson, recorder.

123 STATE OF TENNESSEE, *County of Shelby,*
Civil Commission, Dist. Memphis:

I, John C. Grierson, recorder for the said civil commission in the State and county aforesaid, do certify that the foregoing forty-four pages contain a full, true, and complete transcript of the proceedings had in the above-entitled cause of Thompson Dean against Thomas B. Nelson, Miraim W. Nelson, and Benjamin May, as the same appears of record in my office.

Witness my hand and seal this 20th day of Jan'y, 1864.

JOHN C. GRIERSON,
Recorder.

124 *Index.*

Plaintiff petition, page				1 to 10
Exhibit thereat	"A,"	T. A. Nelson's	note	10 to 11
" "	"B,"	do.	mortgage	11 to 16
	"C,"	do.	2nd note	16 to 18
	"D,"	do.	2nd mortgage	18 to 23
Summons				23 to 24
Bonds for costs				24
Marshall's return of summons				24
Replication				25
Proof of publication				25 to 26
Judgment and decree				27 to 32
Execution				32 to 40
Advertizement to sell				40 to 41
Marshal's return of execution				42 to 44

125 [Copy.]

Exhibit G.—Civil Commission for the District of Memphis.

THOMPSON DEAN, plaintiff,
vs.
THOMAS A. NELSON, MIRAIM W. NELSON, Benjamin May, defendants.

MEMPHIS, TENNESSEE, *Nov. 16th*, 1863.

Whereas, in the above-entitled case, on the 12th day of October, A. D. 1863, a decree was rendered wherein it was ordered that 204 shares of the capital stock of the Memphis Gas Light Company formally held and owned by said defendant, Thomas A. Nelson, subject to mortgage and foreclosure, (of which should be transferred 194 shares to said Miraim W. Nelson, and ten (10) shares to said Benjamin May,) and by the terms of said decree a foreclosure of mortgage and sale of said 204 shares at public sale was ordered, and also that upon said sale taking place, and the marshal of the civil com-
126 mission for the district of Memphis having assigned said shares to the purchaser thereof, the secretary of said Memphis Gas Light Company should transfer the said shares of stock so sold to the purchaser thereof on the proper books of said company; and said decree having been duly approved by Brig. General James C. Veatch, commanding the district of Memphis, now, therefore, the secretary of the Memphis Gas Light Company is hereby ordered and directed without delay to transfer, on the books of said company, said 204 shares of the said capital stock of said company from the parties in whose names said shares are held on said books to Alexander Hanlin, who having purchased the same at said public sale, and paid therefor, and received his assignment of the same from the said marshal, is the proper and legal owner thereof, and fully enti-

127 tled to a transfer of the same, and to receive his certificate thereof.

By order of the civil commission.

BARBOUR LEWIS,
President.

Attest:

JOHN C. GRIERSON,
Recorder.

[Copy.]

Exhibit "H."—Filed April 2nd, 1867.

For value received, I do hereby transfer and assign to Alexander Hanlin one hundred and ninety-four shares in the capital stock of the Memphis Gas Light Company, which have been paid up in full.

In witness whereof I have hereunto set my hand the 16th day of November, 1863.

WM. H. FITCH, JR., *Sec'y.*

The above stock was held by Marian W. Nelson, and sold on execution in favour of Thompson Dean, and transferred in accordance with an order of the hon. civil commission of the district of Memphis, dated Nov. 16th, 1863.

[128] [Copy.]

Exhibit "I."—Filed April 2nd, 1867.

For value received I do hereby transfer and assign to Alexander Hanlin ten shares in the capital stock of the Memphis Gas Light Company, which have been paid up in full.

In witness whereof I have hereunto set my hand the 16th day of November, 1863.

WM. H. FITCH, JR., *Sec't'y.*

The above stock was held by Benjamin May, and sold on execution in favour of Thompson Dean, and transferred in accordance with an order from the honorable civil commission of the district of Memphis, dated Nov. 16th, '63.

130 In the Circuit Court of the U. S. for the district of West Tenn. at Memphis.

Complainants' proof.—Deposition of James H. Pepper.—Filed April 2nd, 1867.

THOMAS A. NELSON & WIFE *et al.*
vs.
THOMPSON DEAN. } In equity.

Interrogatories to be propounded to Capt. James H. Pepper, by complainants on his examination as a witness for complainants in the above-stated cause.

Int. 1st. By compl't: State whether or not you did in the year 1861, while you were secretary of the Memphis Gas Light Company, exhibit to Mr. T. A. Kendig and others, but especially to Mr. Kendig, a letter addressed to you by defendant, Dean, in which the said Dean stated to you in substance that his sympathies were with the south in the war then begun, and that if his business arrangements would admit he would come south, or something to that
131 effect. If you shall answer that you did exhibit such a letter, please state fully where that letter now is, and make the same part of your deposition if you can.

If you cannot exhibit the letter, state its contents as fully as you can.

Answer to the foregoing interrogatory: I do not now remember ever to have had such a letter from the defendant, Mr. Dean, and if I had, I do not now possess it, as I have no letters whatever from that gentleman of that date or near it.

JAMES H. PEPPER.

Sworn to and subscribed before me, March 30th, 1867.

J. A. TAYLOR,
Notary Public.

132 In the Circuit Court of the United States for the district of West Tenn. at Memphis.

Deposition of T. A. Kendig.—Filed July 30, 1867.

THOMAS A. NELSON
vs.
THOMPSON DEAN. } No. 5. In equity.

Interrogatories to be propounded on behalf of complainants to T. A. Kendig, in his examination as a witness for complainants in this cause.

Int. 1. Are you acquainted with the parties to this suit, and if yea, how long have you known them, and when and where?

Int. 2. State what you may know in reference to the sentiments and feelings of defendant as expressed by him, in reference to the

133 southern States in the late war. If you know of his having spoken or written upon this subject, state fully what he said or wrote within your knowledge, and when and where and to whom; give all the particulars, and your means of knowing what he did say or unto what you state.

Int. 3. If you ever had any conversation with defendant Dean in reference to the sales of his stock in the Memphis Gas Light Company, made by Capt James H. Pepper, state fully when and where such conversations took place, and under what circumstances, and what brought them about, and all that was said in such conversations.

Int. 4. If you appointed any one your agent, or requested any one, as your agent, to make a tender to defendant of money in payment for dividends which had been received on stock sold for him by
134 said Pepper, state fully whom you requested so to act for you, and what amount and what kind of money, if any, you furnished for the purpose, and what dividends and upon what stock, and by whom received, you thus desired to tender to defendant.

Int. 5. Are you acquainted with Capt. James H. Pepper, and if so, how long have you known him?

Int. 6th. Did you know anything of sale of stock in the Memphis Gas Light Company made by said Pepper, from conversations with said Pepper himself? If you talked with said Pepper about such sales before or at the time when they were made, state fully all that he said to you about them, and as to whether they were absolute and positive sales, made in good faith and with full authority on.

Int. 7. If you shall have stated, in answer to interrogatory
135 2d, that the said Pepper exhibited to you a letter written by defendant Dean, will you now state fully, if you have not already done so, when and where he exhibited this letter to you and for what purpose, and whether or not it was while the said Pepper was negotiating the sales of defendant Dean's stock in the Gas Light Company? Did you read the letter yourself, and if so, how do you know that it was written by defendant Dean? State, if you know, what became of said letter and where it now is.

Int. 8. State anything more which you may know that will be of interest or importance to either complainants or defendants in the suit.

Answer to int. 1st. Am acquainted with T. A. Nelson and Thompson Dean. Have known the former for about six years; became acquainted with him in Memphis, Tennessee. Have known the latter for about ten years; knew him while a resident of Arkansas
136 and since I have been in Memphis, Tennessee.

Answer to int. 2. I did not meet Thompson Dean from the time of the breaking out of the war until Memphis was occupied by the federal forces. But some time prior to said occupation a controversy arose between John D. Adams, then a resident of Little Rock, and myself as to the position Dean would take, Capt. Adams arguing that Dean was for the south, and referred me to letters that he, Dean, had written to Jas. H. Pepper, the secretary of the Gas Light

Company. To satisfy myself, I called on Pepper, and he handed me the letter to read, and from the contents I was satisfied that his sympathies were with the south, he having stated in said letter that such was the case, and that most of his interests were in the south, and were it not for his family he would come south, or to that effect.

Ans. to 3d int. I never had any conversation with Mr. Dean
137 in regard to his sale of gas stock to J. H. Pepper.

Answer to int. 4. Having purchased from Benj. May, of Memphis, the stock purchased by him from Mr. J. H. Pepper, he, May, informed me that there had been two dividends declared, which amounted to about twenty-seven hundred dollars, and that I would have to pay this am't to Dean the first opportunity I had for doing so. Soon after the occupation of Memphis by the federals forces, Dean came down here. He came into my office, when I informed him of my purchase from May, and told him I wished to pay him the amount due on the note, which he refused to take. I then called on my partner, Mr. Charles S. Cook, and Mr. E. Yerger to make him a tender legally, which they did. The money tendered by them was in gold and U. S. Treasury notes. The tender of money made by Cook and Yerger was for dividends made by the Memphis Gas Light Co., and to be endorsed on a note given by Benjamin May to J. H. Pepper in part payment of said note.

138 Ans. to int. 5th. I am acquainted with J. H. Pepper; have known him six or seven years.

Ans. to int. 6. Before I purchased of Benj. May the gas stock purchased by him from J. H. Pepper I advised with Pepper about it. He stated to me that the trade with Dean was absolute and positive and advised me to make the purchase, saying at the time that I could not make a better investment; that he had full authority to make the sale to May & Co

Ans. to int. 7. J. H. Pepper, exhibited the letter spoken of in int. 2, to me in the office of the Gas Light Co., then on Maine street in Memphis, Ten.; he showed me the letter, I think, at my request, and I think it was at the time or just prior to his negotiations with T. A. Nelson, I. I. Murphy and others; I read the letter myself, and know it was written by Dean, being familiar with his handwriting. I do not know what became of the letter or where it is now.

139 Ans. to int. 8. After the occupation of Memphis by the federal forces, sometime in 1862, J. H. Pepper was in my office and I told him of Dean's refusal to to take the money due on the notes, and asked him as the vendor to May, to take it and give me a receipt for it. He said if he had the papers he would do so, but that he had transferred the whole matter to Dean, and had no authority to do so, but that he would write Dean and advise him to take it, and again assuring me of the validity of the sale &c.

T. A. KENDIG.

Subscribed and sworn to before me this 3d day of April, 1867.
ISAAC MORRISON.

In the Circuit Court of the United States, for the district of West Tennessee, at—

THOMAS A. NELSON AND WIFE
vs.
THOMPSON DEAN. } In equity.

Cross-interrogatories to be propounded to T. A. Kendig, a
140 witness for the complainant in this cause.

Cross-it. 1st. Are you not plaintiff in a cause now pending in this court wherein you are suing the defendant in this cause, Thompson Dean, for some shares in the Memphis Gas Light Company? Are not all your prejudices and predilections in favour of the plaintiff in this cause and against the defendant?

Int. 2. How long since you saw the letter spoken of in your answer to int. 2nd? Are you positive that the language used by you was the language used by Thompson Dean, in said letter, or is it simply your own inference from the letter? Do not you know that Thompson Dean, was a loyal citizen of the United States? Do you know of his aiding and abetting those persons engaged in waging war against the United States, in the war commonly known as the great rebellion?

141 Cross-int. 3d. When you purchased from May, stock on the Memphis Gas Light Company, did not May inform you of the terms on which he had purchased, and did you buy, taking his place, and standing in his stead? If May did not inform you, were you not still familiar with the particulars of the sale from Pepper to May?

Cross-int. 4. Did you not know that May had not paid to Pepper, or to defendant, Thompson Dean, the money as by his terms of purchase he was to pay to said Pepper at the time you purchased from May? Did you not know at that time that May had failed to comply with his terms of purchase.

Cross-int. 5th. How do you know that Charles S. Kook and E. Yerger made a tender to Thompson Dean? How do you
142 know it was in gold and U. S. Treasury notes, and for dividends made by the Memphis Gas Light Company, and to be endorsed on the note given by Ben. May to J. H. Pepper in part payment of said note? Were you present when the same was tendered or do you only know the fact from what you heard from them?

BULLOCK & ANDERSON,
Att'ys for Def't. Dean.

Ans. to x-int. 1. I am plaintiff in a suit now pending in the U. S. Court against Thompson Dean for shares in the Memphis Gas Light Company. I have no prejudices in the matter; my predilections are in favor of the plaintiff.

Ans. to x-int. 2. Sometime during the years 1861 or 1862, cannot state positively the date. I cannot say positively that the language used by Dean was word for word that used by me, but from the tenor of his letter I came to the conclusion which I stated

143 in my answer. I gave the substance of the letter to the best of my knowledge and belief. I know nothing in regard to his loyalty further than I have already stated. I do not know of his aiding or abetting the persons engaged in the war, known as the "great rebellion."

Ans. to cross-int. No. 3. I know nothing in regard to the transaction except that stated in my answer to int. No. 4-in-chief.

Ans. to x-int. No. 4. I know that May owed about twenty-seven hundred dollars on the note given to J. H. Pepper for gas stock purchased from him. May told me that the reason it was not paid was that there was no one here authorized to receive it, and that I would have to pay this amount on the note the first opportunity that I had for doing so. But I did not know, and had no reason to believe, that May had failed in any respect to comply with his contract of purchase.

144 Ans. to cross-int. No. 5. I only know it from their statement, but I do know that I counted the money, which was in gold and treasury notes, and gave it to Mr. C. S. Cook with instructions to make the tender, and to get Mr. Yager to go with him.

T. A. KENDIG.

Sworn and subscribed before me this 30th July, 1867.

ISAAC MORRISON, *U. S. Com.*

Circuit Court of the United States for district of West Tenn., at Memphis.

146 *Deposition of Charles S. Cook.—Filed August 9th*, 1867.

T. A. NELSON and WIFE and BEN. MAY
vs.
THOMPSON DEAN. } In equity.

Interrogatories to be proposed to E. M. Yerger and Chas. S. Clark by comp'l'ts on their examination as witnesses for complainant in the above cause.

Int. 1st by compl't. Are you acquainted with Thompson Dean the defendant in this suit?

Int. 2d by same. State whether or not, you, or either of you, at any time made a tender, or were present when a tender was made of money to defendant, Dean, for one T. A. Kendig, as dividends on stock in the Memphis Gas Light Company, which had been paid to Ben May? If yea, state all that you know about it, giving

147 time and place, and the kind and amount of money tendered, and all that took place. State how you came to be connected with the matter and all that defendant, Dean, said. State how the tender was made, and by whom, and for what the tender was made, and all other particulars.

Answer of Chas. S. Cook.

Int'g't'y 1st. I am acquainted with Thompson Dean.

Int'g't'y 2nd. I made a tender to Thompson Dean for T. A. Kendig in payment for dividends of Memphis gas stock. I tender on or about the 23rd July, 1862, in the Memphis gas office at 2nd street in Memphis, Tennessee. I made the tender in gold and U. S. currency; about twenty-five hundred dollars in gold and about
148 one thousand in U. S. currency. Dean refused to receive it, and told me if I would pay the whole am't for the purchase of stock he would take it, but that he would not take any installments unless I would pay all; Kendig asked me to make the tender as he was going away and would not be here to attend to it himself. I told Dean that the tender was made to pay the amount due as dividends on the stock purchased by Kendig of Ben. May.

CHARLES S. COOK.

Subscribed and sworn to before me this 9th day of August, 1867.

ISAAC MORRISON,
U. S. Comm'r.

Cross-examination waived.

BULLOCK & ANDERSON,
Att'ys for Def't.

149 In the Circuit Court of the United States for the District of West Tennessee, at Memphis.

Deposition of C. B. Church.—Filed 10th August, 1867.

THOS. A. NELSON AND WIFE
vs.
THOMPSON DEAN. } In equity.

Interrogatories to be propounded to J. J. Murphy, Ben. May and Charles B. Church, on behalf of complainants, on their examination as witnesses for complainants in the above cause.

Int. 1st. Are you acquainted with the parties to this suit?

Int. 2nd. Did you or not buy stock in the Memphis Gas Light Co. in the year 1861 from Capt. Jas. H. Pepper? If you , state when and how much, and upon what terms. State fully the circumstances under which you bought said stock, and the representations made to you by said Pepper to induce the purchase. Were such purchases absolute and in good faith, or not?

150 Int. 3rd. If you have paid for the stock so purchased by you, or any part of it, state when and where, and to whom you paid, and how much you paid. If you still owe for any portion of said stock, state who holds your obligations for it. and how you know this. If defendant Dean claims to hold them, state all that you know as to his holding such obligations, and how you obtained your information.

Int. 4th. State fully what you may know of the expression by defendant Dean in 1861, in word or writing, of his feelings and sentiments towards the southern States in reference to the war then in progress, and state particularly how you derived your information. If you shall say that any writing was exhibited to you, to give you information on this subject, state when and where it was so shown you, and by whom and for what purpose, and under what circumstances. State, too, whose writing it was, and how you know this, and in whose possession such writing was, and if you know what has become of it. State the contents of such writing as fully as you can.

151 Int. 5th. State fully what dividends, if any, you have received upon stock so bought by you from said Pepper. If there is any portion of said stock upon which you have not received dividends, state what portion and why you have not received them. If you have paid or offered to pay to defendant any dividends received by you, or any of said stock, state fully the particulars.

Int. 6th. State anything which you may know that will be of interest or importance in this cause to either complainand or defendant.

Answer of C. B. Church.

Int'g't'y 1st. I am acquainted with the parties.

Int'g't'y 2nd. I bought stock in the Memphis Gas Light Co. from Capt. J. H. Pepper in June and July, 1861, to the amount of (I think) twelve thousand dollars. I purchased it on the same terms as the purchase made by T. A. Nelson, at or about the same time, and gave the same kind of obligations for the payment of the stock purchased on a credit, having paid part of the purchase

152 money down in making the last purchase, (in July,) in the same proportions, according to the stock which I got, as was paid by T. A. Nelson. I purchased at the solicitation of Capt. Pepper, and at the price he offered to take for it; and he exhibited a statement of the conditions of the Co. as an inducement to me to make the purchase with Nelson and others. The purchase was absolute and made in good faith.

Int'g't'y 3rd. I never paid anything on the stock purchased by me before the presentation of my notes by the holder, T. Dean, in 1862. He presented them to me soon after the occupation of Memphis by U. S. troops in 1862, and said he was the owner of them. It was not in my power to pay them at that time, and by agreement with him I transferred to him the stock which I had purchased of Pepper, on a credit, and took his obligation to transfer the same back to me at any time within five years by the payment (by me) of the par value of the stock. I think the amount was $10,000, or thereabouts. Since then I paid him $5,000 or thereabouts, and took his transfer of stock at par to that am't.

153 Int'g't'y 4th. I know nothing in reply to this interrogatory.

Int'g't'y 5th. I received, I think, three dividends on the stock purchased of Pepper previous to the arrangement with Dean

above referred to, and accounted for it in the settlement with him. The amount was about $1,500. The dividends, as I understood, was on all the stock belonging to me at the time they were declared.

At the time Dean presented my note he contended that I should pay him the money according to the contract, or transfer the stock to him. Not being able to do the former, I made the transfer to him. He never contended or intimated to me that the sale of the stock by Pepper was not made in good faith.

Int'g'ty 6th. I know nothing.

C. B. CHURCH.

Subscribed and sworn to before me this 10th of August, 1867.

ISAAC MORRISON,
U. S. Com'r.

Cross-examination waived.

BULLOCK & ANDERSON,
Att'ys for Defendant.

154

155 In the Circuit Court of the United States for the district of West Tenn., at Memphis.

Deposition of J. J. Murphy.—Filed Sept. 27th, 1867.

THOMAS A. NELSON AND WIFE
vs.
THOMPSON DEAN. } In equity.

Interrogatories to be propounded to J. J. Murphy, Ben. May and Chas. B. Church, on behalf of complainants, on their examination as witnesses for compl'ts in the above cause.

Int. 1. Are you acquainted with the parties to this suit?

Int. 2. Did you or not buy stock in the Memphis Gas Light Company, in the year 1861, from Capt. James H. Pepper? If yea, state when, and how much, and upon what terms. State fully the circumstances under which you bought said stock, and the representations made to you by said Pepper to induce the purchase. Were such purchasers absolute and in good faith or not?

156 Int. 3rd. If you have paid for the stock so purchased by you, or any part of it, state when and where, and to whom you paid, and how much you paid; if you still owe for any portion of said stock, state who holds your obligations for it, and how you know this. If defendant Dean claims to hold them, state all that you know as to his holding such obligations, and how you obtained your information.

Int. 4. State fully what you may know of the expressions by defendant Dean in 1864, in word or writing, of his feelings and sentiments towards the southern States in reference to the war then in

progress; and state particularly how you derived your information. If you shall say that any writing was exhibited to you to give you information on this subject, state when and where it was so shown you, and by whom, and for what purpose, and under what circumstances; state to whose writing it was, and how you know this, and in whose possession such writing was, and if you know what has become of it; state the contents of such writing as fully as you can.

157 Int. 5th. State fully what dividends, if any, you have received upon stock so bought by you from said Pepper. If there is any portion of said stock upon which you have not received dividends, state what portion, and why you have not received them. If you have paid or offered to pay to defendant any dividends received by you on any of said stock, state fully the particulars.

Int. 6. State anything else which you may know that will be of interest or importance in this cause to either defendant complainants.

Answer of J. J. Murphy.

Answer to int'g'ty 1st. I am acquainted with the parties.

Answer to int'g'ty 2nd. I did purchase stock in the Memphis Gas Light Co. from Capt. J. H. Pepper in the year 1861. It was about 20th of July. I first purchased $3,000, to be paid for out of the earnings of the co. in quarterly dividends, with 6 per cent. interest until paid.

In a few days after I purchased $5,000 more, paying
158 20 per cent. cash and the balance in quarterly dividends with interest; in a few days afterwards Capt. Pepper proposed to sell me the remainder of what gas stock he had, which was about $73,000, on the terms and conditions of the above last-mentioned purchase. It being more than I could handle at that time, I applied to Mr. P. A. Nelson and Ben May to join me in the purchase. After going to the gas office with me, examining the books of the company, and such explanations and representation of its value from Capt. Pepper, they agreed to join me in purchasing the 73,000 of stock from Capt. Pepper, but before closing the trade Capt. Pepper asked for time enough to go to Louisville, Ky., to consult with Capt. P. Dean, all of which was agreed to, and on his return the trade was consumated, we paying him $20,000 cash, and the balance to be paid in quarterly dividends, with 6 per cent. interest out of the earnings of the co., he, Pepper, retaining a lien or deed of trust on all the stock until paid in full.

The purchase was made in good faith on my part, and Capt.
159 Pepper seemed desirous to close on the above conditions, which was his proposition.

Answer to int'g't'y 3d. This question was answered in preceding, or int'g'y 2nd.

Answer to in'g't'y 4th. I know nothing; don't remember to have talked politics with the defendant, Dean. Our interview was generally on business.

Answer to int'g't'y 5th. In the latter part of 1861 and early part of 1862 there were quarterly dividends declared by the company. The first two I paid over to Mr. Jno. Shelby, as the agent of Captain Dean. After that I left the city for Columbus, Ky., and I think the 3rd dividend was collected by Mr. Fitch, who was attending to my business. He was also sec'y of the gas co. I never have any conversation with the defendant, Capt. Dean, on that subject since my return home.

Answer to int'g't'y 6th. I have given all the information I possess in the preceding answers in this paper. In order to a clearer understanding, I state that the first $3,000 purchased by me, and
160 also a part (nearly one-third) of the purchase of the $73,000, was on the same terms as the purchase made by T. A. Nelson.

Sworn to before me this 24 Sept., 1867.

J. J. MURPHY.
ISAAC MORRISON,
U. S. Com'r.

Cross-examination waived.

BULLOCK & ANDERSON,
Att'y for Def't.

Cross-examination.

By the defendant:

Question 1st. Before the breaking out of the war how much stock was owned by James H. Pepper in the Memphis Gas Light Co., and how much by Thompson Dean?

Answer. My impression is that Capt. Jas. H. Pepper owned about twenty thousand dollars or more at par value. I cannot state the exact am't of Capt. Dean's stock, but know it was a majority of the stock.

2nd. How long before Pepper sold the stock to yourself and the other gentlemen named was it understood by yourself and
161 them that Dean had assigned the stock to Pepper?

Answer. I did not know of any purchase or transfer to Capt. Pepper to Capt. Dean until about this time. Capt. Pepper proposed to sell me the bala ce of the stock he had left, and referred to the stock book, and showed he became poss'ed of it some time in May previous, 1861. The subject of Deen's transfer to Pepper was not mooted at the time of purchase, as we were governed by the stock books.

3d question by same. Were the pecuniary circumstances of Pepper known by you and the other gentlemen you have named? Was he understood by you and them to be able to purchase and hold in his own right so large an amount of stock? Did you not all know that the assignment was made by Dean to Pepper to protect, if possible, the stock from confiscation, and that Pepper had become
162 alarmed by the growing rebellion, and wished to dispose of the stock in any way, so that he might leave Memphis and go north? State your knowledge of Pepper's motives for selling.

Ans. I don't know that I can state the pecuniary circumstances of Capt. Pepper, but my impressions were that Capt. Pepper was worth from $30,000 to $40,000 cash, and could only purchase so large an amount of stock unless on partial credit. I did not know what Capt. Dean's reasons were for selling his stock to Pepper, but presume, seeing that the war was a fixed fact, that by sale or transfer to Capt. Pepper he would protect his interest in Memphis, and probably save his gas stock from confiscation. Capt. Pepper, in my opinion, did become unnecessarily alarmed, and it may have been the cause
163 of his offering his stock for sale. Capt. Pepper's family, at the time of the sale, were north, and some time after his sale he himself went north.

4th. By same. What was the value of this stock at the time of this sale, in 1861, and on what terms did you and Nelson and the other gentlemen named purchase the stock assigned "as stock conveyed by Dean to Pepper on the 23d day of May, 1861"?

Ans. I did not know of any being sold at more than par; but none could be purchased at less; therefore par was considered a fair price at that time. We were to pay par for the stock, paying 20 per ct. down and the residue in payments out of earnings of the company, with 6 p. c. interest, and gave a deed of trust on the stock to secure and make safe the residue.

5th. By same. Please state whether the instruments attached
164 hereto, marked 23, are correct copies of the transfers made by Pepper to you of the stock you purchased from him; and are not the shares mentioned in the assignment numbered 1 and 2 the shares that were to be paid for out of the earnings?

Answer. I presume they are.

6th. By same. At the time of the purchase of the stock by yourself, T. A. Nelson and others, what was the understanding of you and them as to how long it would take for the earnings of the stock (sold to be paid for by the net quarterly earnings of the stock) to pay for the same?

Answer. My impression is, that we thought it would pay itself out in four years at most, not longer than five years.

7th. By same. Were threats being made by persons engaged in exciting the southern rebellion to have this stock confiscated
165 at or just before the time Pepper sold the stock to you, Nelson and others. And if so, state whether this was not the motive that induced Pepper to sell stock, the earnings of which was to pay for the stock within five years. If this fear of confiscation was not the motive, what was the motive of Pepper in making such a sale?

Answer. Of my own knowledge I know nothing of the threats of confiscation, but was told by Capt. Pepper that there was talk of confiscating whatever interest Capt. Dean might or did have in the works. I do not think Pepper had any fears that the stock held by him could be confiscated, but said to me that he would not suffer the vexation and annoyance he had gone through the previous two weeks for a half a dozen gas works; he said it was worrying the life out of him.

8th. By same. Where did you, T. A. Nelson, and the other persons you have named, reside at the time the purchase of the stock
166 was made; where Dean reside at the time? And state as near as you can the value of the stock which Dean owned in the Gas Light Company, and which he assigned to Pepper, and Pepper assigned to you and the other gentlemen you have named, to be paid out of its own earnings.

Answer. T. A. Nelson, Ben. May, C. B. Church and myself, the parties to the purchase from Capt. Pepper, resided in the city of Memphis, which was our homes for many years previously. Capt. Dean resided at that time in the city of Cincinnatti, O. My impression is that [that] Capt. Dean's stock was worth in the market par, or one hundred dollars per share.

J. J. MURPHY.

Sworn to before me this 27th Sept., 1867.

ISAAC MORRISON,
U. S. Commissioner.

167 [Copy.]

3.

For value received, I transfer and assign to John J. Murphy sixty-two and two-third shares in the capital stock of the capital stock of the Memphis Gas Light Company, which have been paid up in full.

In witness whereof I have hereunto set my hand the 20th day of July, 1861.

JAMES H. PEPPER.

Witness:

[Copy.]

1.

For value received, I hereby transfer and assign to John J. Murphy fifty-two shares in the capital stock of the Memphis Gas Light Company, which have been paid up in full, the same being part of the stock conveyed to me by T. Dean, on the 23d May, 1861, and no other stock.

In witness whereof I have hereunto set my hand the 20th day of June, 1861.

JAMES H. PEPPER.

Witness:

168 [Copy.]

2.

For value received, I hereby transfer and assign to J. J. Murphy one hundred and fifty-three and one-third shares in the capital stock of the Memphis Gas Light Company, which have been paid up in full,

the same being part of the stock conveyed to me by T. Dean on the 23d May, 1861.

In witness whereof I have hereunto set my hand the 20th day of July, 1861.

JAMES H. PEPPER.

170 In Circuit Court of United States for District of West Tenn., at Memphis.

Deposition of Ben. May.—Filed Sept'r 30th, 1867.

THOS. A. NELSON
vs.
THOMPSON DEAN. } In equity.

Interrogatories to be propounded to J. J. Murphy, Ben. May and Chas. B. Curch, on behalf of complainants, on their examination as witnesses for complainants in the above cause.

Int. 1st. Are you acquainted with the parties to this suit?

Int. 2nd. Did you or not buy stock in the Memphis Gas Light Company, in the year 1861, from Capt. Jas. H. Pepper? If you did, state when and how much, and upon what terms; state fully the circumstances under which you bought said stock, and the representations made to you by said Pepper to induce the purchase.

171 Were such purchases absolute and in good faith or not?

Int. 3rd. If you have paid for the stock so purchased by you or any part of it, state when and where, and to whom you paid, and how much you paid. If you still owe for any portion of said stock, state who holds your obligation for it, and how you know this. If defendant Dean claims to hold them, state all that you know as to his holding such obligations, and how you obtained your information.

Int. 4th. State fully what you may know of the expression by defendant Dean, in 1861, in word or writing of his feelings, and sentiments towards the southern States in reference to the war then in progress; and state particularly how you derived your information. If you shall say that any writing was exhibited to you to give you information on this subject, state when and where it was so shown you, and by whom and for what purpose, and under what cir-

172 cumstances. State, too, whose writing it was and how you know this; and in whose possession such writing was, and, if you know, what has become of it; state the contents of such writing as fully as you can.

Int. 5th. State fully what dividends, if any, you have received upon stock so bought by you from said Pepper. If there is any portion of said stock upon which you have not received dividends, state what portion, and why you have not received them. If you have paid or offered to pay to defendant Dean any dividends received by you or any of said stock, state fully the particulars.

Int. 6th. State anything else which you may know that will be of interest or importance in this cause to either complainants or defendants.

Answer of Ben. May.

Answer to intg'ty 1st. I am.

Answer to intg'ty 2nd. On 11th June, 1861, I purchased of
173 Capt. J. H. Pepper 30 shares of the capital stock in the Memphis Gas Light Co., for which I gave my note and mortgage upon same terms as did Tho's A. Nelson and others, who purchased at same time, on July 20th, 1861. I purchased 217 shares, for 63 of which I paid cash, and balance, 154 shares, I gave note and mortgage as above. Some time previous to the purchases, perhaps in May, Capt. Pepper, who had just returned to the city from Cincinnati, called on me at my place of business—I was cash'r Bank of West Tenn.—and desired a confidential interview, the purpose of which was the sale of stock in the Memphis Gas Light Company; that my name had been given him by Capt. Dean. The Bank of West Tenn. was Dean and Hale's correspondent, making their collections and remitting proceeds; Capt. Pepper also kept the a'ct of the Memphis Gas Light Co. in his own name, however, with the Bank of West Tenn. Their business relations threw both Pepper, Dean and myself in rather intimate association. At this interview Capt. Pepper consulted
174 me as to certain names, J. J. Murphy, T. A. Nelson, C. B. Church and others, to whom he could effect sales. I was not at liberty to mention the names nor the conversation between Capt. Pepper and myself until the sale was perfected. A very few days thereafter, I called by appointment at the Gas Co's office, when Capt. Pepper showed me by the books, &c., the advantages to myself of the purchase. I purchased in full faith, having not a doubt as to the faith and fair dealing of Capt. Pepper. I understood that Capt. Dean was anxious to give me such advantages as the proposed sale of stock offered.

Answer to int'g't'y 3rd. I stated in answer to int. 2nd that I paid cash for 63 shares. I made no subsequent payment on the balance. I was ready at any time until I sold the stock to comply with the terms of my notes. When Capt. Pepper was leaving the city he informed me that he would leave his power of att'y with "our mutual friend John Shelby."

175 John Shelby kept his account with the Bank of West Tennessee; I saw him almost daily up to near the time of his decease. Mr. Shelby showed me, at my request, what I thought an indefinite power of att'y, to collect money, &c., due Pepper. I asked Mr. Shelby where were my notes given Pepper for the gas stock, he answered he did not know, but thought Capt. Pepper of course had carried them with him. I asked Mr. Shelby if he would take the money, and indemnify me, as the notes were negotiable, and might turn up against me without the credit, as we could not communicate with the holder. He answered emphatically, no, and that I would be simply foolish to make such a payment as he would receipt for. When I transferred the stock to P. A. Kindig, I impressed upon him all my obligations, touching the stock. He informed me that Dean holds my notes, and he always refused to allow him to make any payment upon them.

Answer to int'g'y 4th. Have no positive recollection as to Capt. Dean's political sentiments at the time of purchase.

176 In many individual cases, I know that he professed the warmest sympathy and personal friendship for the south and southern people.

Answer to int'gt'y 5th. I received as dividend on the stock purchased by me, I think, eighteen per cent.

Answer to int'gt'y 6th. I know nothing.

Further deponent saith not.

BEN. MAY.

In Circuit Court U. S. for dist. of West Tenn., at Mempnis, Tennessee.

THOMAS A. NELSON AND WIFE
vs.
THOMPSON DEAN. } In equity.

Cross-interrogatories to be propounded to Ben. May, a witness for plaintiff:

177 Cross-int'y. 1st. At the time you purchased stock in the Memphis Gas Light Company from James H. Pepper, what were your relations with Pepper & Thompson and Dean, the defendant? Were you not familliar with their business, and was not Ben. May in intimate association with Pepper and Dean, so far as business was concerned?

Cross-int'y 2nd. Were you not fully cognizant of the reasons and inducements which operated upon Pepper at the time of said purchase, causing him to dispose of the said stock, and were not Ben. May and J. J. Murphy at that time engaged in the war, or inciting thereto, which was being waged by certain parties against the government of the United States?

Cross-int'gt'y 3rd. If you answer affirmatively to the cross-interrogatory 2nd, state what these inducements were.

178 Cross-int. 4th. Was not James H. Pepper secretary of the Memphis Gas Light Company at that time, and did you not know that said Pepper did not own said stock, but was simply the trustee of defendant, and was not your purchase made with the full knowledge of said fact?

Cross-int'y 5th. Did you ever comply with the conditions of the sale made by Capt. Pepper for defendant? Did you ever pay as according to terms of sale you were to pay? Did you not receive dividends on said stock? If yea, did you ever pay to Dean or Pepper as you should have done according to contract?

Cross-int. 6th. When Ben. May transferred stock to Kindig, did he not inform said Kindig of the conditions of the sale made by Pepper of Dean's stock, and give him, said Kindig, full particulars of

the same? Did not said T. A. Kindig purchase said stock from May with his eyes open as to the facts?

179 Cross-int'y 7th. If Ben. May has no recollection as to Capt. Dean's political sentiments at the time of purchase, will he explain what he means by individual cases, as he has set forth in his answer to int'y 5th? Did Capt. Dean ever aid or abet the people in arms against the United States in the late war between the said United States and certain southern States?

X-int'y 8th. You say, in answer to int'y 2nd, that you purchased stock on same terms as T. A. Nelson did. How do you know you did? Do you speak from actual positive knowledge or partly from what others say? Were you present when T. A. Nelson and others purchased stock in the Memphis Gas Light Company?

Cross-i'ty 9th. Did not Ben. May inform Kendig that he, Ben. May, had failed to pay, as per contract of purchase, when Kendig purchased the stock?

BULLOCK & ANDERSON,
Att'ys for Defendant, Dean.

180 *Answer of Ben. May to cross-interrogatories of defendant.*

Ans. to cross-int'y 1st. My relation to Pepper and Dean were of a friendly business character, though not very intimate. I was not familiar with their business except so far as it passed through the Bank of West Tenn., of which I was cashier.

Ans. to int'y 2nd. I know Capt. Pepper as the legal owner of the stock, and it was he who offered inducements that I thought to my interest to make the purchase. I was never engaged in the military service of either army, nor was I at any time inciting rebellion against the U. S.

Ans. to int'y 3rd. I answered in 2nd.

Ans. to int'y 4th. He was; and I know that he did legally and by valid transfer, hold said stock, having myself examined the transfers to him. I had no transactions with him at any time as trustee for Capt. Dean, or any one else as such.

181 Ans. to int'y 5th. I complied with the terms of sale in every particular, as far as prudent or possible; wherein I failed is fully set forth in answer to direct int'g'ty 3rd. In answer to direct int'y 5, I answered as to dividends received by me.

Ans. to int'g'ty 6th. When I sold to Kendig, he assured my obligations and took my position as to my obligations held by Capt. Pepper, not as trustee, but as principal. He knew why the dividends had not been paid over as set forth in answer to direct int'g'ty 3.

Ans. to int'g'ty 7. Capt. Dean had many personal friends in Memphis. I never conversed with him on political points, nor did he express to me any feeling of preference for either side, but he did exhibit the most perfect confidence in and friendship for individuals of known southern prejudices, and had dealings with such that I think he might have avoided.

Ans. to int'y 8th. I was present and read the papers, when they

were signed and delivered, and with Mr. Nelson and others made the acknowledgement so far as I was concerned.

182 Ans. to int'g'ty 9th. The answer to this int'g'ty is embraced in answer to x-int'g'ty 6.

BEN. MAY.

Subscribed and sworn to before me this 22nd August, 1867.

ISAAC MORRISON,
U. .S Com'r.

Cross-examination by the defendants continued.

10. By the defendant: What was the cash value of the stock in the Memphis Gas Light Co. at the time you and T. A. Nelson and the other gentlemen named purchased the stock you have mentioned?

Answer. I think it would have sold at from one hundred and ten to one hundred and twenty-five, to say 10 to 25 pr. ct.

11. By same. What was the understanding and opinion of yourself, Mr. Nelson, and the other gentlemen named, at the time

183 you made the purchase, as to the length of time it would require for the dividends on the stock purchased, to be paid for out of the dividends, to pay for the same?

Answer. I do not remember that any such calculations were made, all were of opinion, however, that it would be good paying stock; I felt assured that the dividends would exceed the interest, either in cash or cash and increase of stock dividends. I understood that the surplus was liable to be used in extension of the works and other improvements.

12. By same. What number of shares of the stock in the Gas Co. had Thompson Dean immediately prior to the events which resulted in the late war? How much stock did Dean assign to Pepper? About what time was that assignment made?

Answer. I do not know without reference to the books of the co. The transfer and stock books were regularly kept, and should show such particulars.

184 12. By same. Please examine the two papers now shown you and attached hereto, marked A and B, and state whether they are correct copies of the assignment of stock made by Dean to Pepper. Did you examine these assignments at the time you, Nelson and others, entered into the arrangement with Pepper for the stock? Please state the number of shares covered by these assignments; also state where Jno. Shelby and Abel Limoster who made the assignments to Pepper, as attorney-in-fact for Dean, at the time resided.

Answer. The one marked A, transferring fifteen hundred shares to Jas. H. Pepper by Jno. Shelby, att'y, accords with my recollection of the result of my investigation. I think it correct. The one marked B, I cannot remember anything concerning it, neither have I any knowledge of Mr. Limister. Jno. Shelby was and had long been a citizen of Memphis, and had been at an earlier period connected with the Memphis Gas Co.

14. By same. What amount of stock in the Gas Co. was it understood by you and the other gentlemen interested, was
185 owned by James H. Pepper at the time Dean's stock was assigned to him. State your best recollection and what was the whole number of shares in the co.

Answer. I do not know, but in my purchase think Capt. Pepper transferred a part of twenty thousand dollars, 200 shares, ($20,000) originally held by him; that is, a part of my purchase was part of the two hundred shares. I think the capital stock was over two hundred thousand dolls.

15. By same. Then your understanding at the time was that Pepper owned 200 shares of the capital stock, and that Dean, through John Shelby, attorney-in-fact, assigned him 1,500 shares on the 23rd of May, 1861. Please state whether Pepper disposed of all the stock, both his own as originally held, and that assigned to him by Dean.

Answer. Yes; that Pepper had long held two hundred shares or more. I do not know how many shares of stock transferred by Dean to him were afterwards transferred by him. I think in the
186 sale to myself and others he transferred $20,600, for which he rec'd cash about that am't, selling the balance on mortgage as stated. In the last transfer to me it stated the stock transferred by Dean to him. I cannot say that it was Capt. Pepper's intention to sell his original stock for cash and all of the Dean purchase on time; he did not so state it, but did, however, receive in cash enough to cover, or nearly, i. e., his original two hundred shares.

16. By same. Please look at the three papers now shown you purporting to be copies of the assignments made to you by Pepper, and state whether the assignment No. 1 for 63 shares, was not for the stock you paid for at its par value, while the other two assignments of stock, being stock assigned to him by Dean on the 23rd of May, 1861, was to be paid for out of its net earnings.

Answer. The one marked No. 1 for sixty-three shares I paid cash for, and Nos. 2 and 3 for thirty shares and one hundred and fifty-four shares respectively, I gave note and mortgage for, to be paid for out of earnings.

187 17. By same. What was the condition of the public mind in the city of Memphis in May, June and July, 1861, with reference to the impending rebellion? What were the rumors, if there were any, in that city in regard to the confiscation of property owned by citizens of the north? Were there any vigilance committee?

Answer. I believe in June and July the majority of citizens of Memphis were southern in feeling and divided in favor of the south, in fact were so from the time the legislature passed the ordinance of secession. My intercourse was mostly with merchants and business men, whom, I think, were almost unanimous against confiscation, believing it a measure calculated to irritate the northern mind. I do not know at what time vigilance committees were appointed, nor what particular powers they exercised.

18. By same. In the months of May, June and July, 1861, was not a very great excitement in this city on the question of Union

188 and disunion, and were there not threats and rumors of the intention to confiscate property owned by nothern citizens? Was not the militia being organized?

Answer. There was excitement touching military affairs, also excitement as to Union and disunion, as early as May, which grew as event progressed. Gov. Harris called for State troops and they were organized in spring and summer, of whom were turned over, after ratification of ordinance of secession, to the confederate service. I very rarely heard the subject of confiscation discussed.

18½. By same. In your answer to the 2nd direct interrogatory you speak of a confidential interview between yourself and Pepper about the sale of the stock to Nelson, Murphy and Church and others. State how long this was before the stock was purchased; and especially state the reason why this interview was confidential and why you were not at liberty to mention the names of these gentlemen until the sale was effected? What was the object of this secresy?

189 Answer. My understanding was that the stock was for sale, and that the names of the parties who were to be first approached and agreed upon as purchasers should be kept confidential. Capt. Pepper preferring to select the parties rather than have it publicly known and perhaps be annoyed by others desiring to make a purchase. He also thought it would be sooner and more satisfactory accomplishment by such proceedings. The first sale to me was made soon after this interview.

19. By same. In that interview did Pepper inform you the fact that Dean had assigned his stock to him? Were all of you gentlemen, Nelson, Murphy and the others, present when the transaction was consumated?

Answer. Capt. Pepper said at this interview that he designed holding still a large interest himself in the co.; that Dean had made a transfer to him of stock, I do not know how much, from which he proposed to transfer to us. I think all the parties named were present when sale was consumated.

190 20. By same. If Pepper then intended holding a large interest in the company, when did he change that intention?

Answer. The interview was in May. The first transfer to us was 11th June following. I do not know when he determined to sell out entire.

21. By same. What motive induced Pepper to sell the stock assigned to him by Dean to be paid for out of its next earnings, when the stock at the time was worth in cash more than its par value.

Answer. He said my name and others had been given him by Dean as a preference, and made his proposition without stating motives, beyond believing it greatly to my interest to purchase upon said terms.

22. By same. But had you no understanding as to the motive that induced such an unusual transaction? Did not you and Nelson sell, within a day or two after its purchase, the stock you purchased of Pepper and paid for at its par value in cash?

191 Answer. As stated in answer to x 21, Capt. Pepper gave no further reason. If the transaction was an unusual one, he

gave it as an inducement why I should buy, which I afterwards did upon its own merit and without any understanding beyond it being a valid sale and transfer. I sold the sixty-three shares for cash, and afterwards sold the balance to Kendig, who assumed my obligations.

17. By same. Did you not know as to the result of the confidential interview you had with Pepper, that the object of Pepper was to assign Dean's stock to citizens of Memphis to prevent its confiscation? What other benefit could Dean derive from the transaction, as he was only to get the dividends? Did not Pepper leave Memphis for the north as soon as he effected this arrangement, and was he ever here until after the federal forces took possession of this city?

Answer to 25. I could not so have understood such motive, unless Pepper had so informed me, which he did not. He distinctly
192 told me that the intention was to still hold a majority of the stock. After the transfer in June I understood that Pepper, Williamson and others were holding a majority of the stock. After the July transfer Pepper left Memphis, and did not return, to my knowledge, till after the occupation of Memphis by the U. S. forces. Dean had already assigned to Pepper, who was sec'y of the co. and a citizen of Memphis, the 1,500 shares of stock; the June transfer may have been made to allay such prejudices—which was considerable—as existed against a non-resident owning and managing so important concern as the Memphis Gas Co.. Such prejudices I know did exist prior to the first transfer, as it does now. To have accomplished this much was certainly advantageous to the co., and, if to the co., in like proportion to the stockholders.

24. By same. But how was it to benefit Dean after all of this stock was transferred, if these transferred were made bona fide and
193 the stock to be held by the assigned? Or do you mean that these other persons were holding the stock for Dean's benefit?

Answer. I examined the transfer to see if I would obtain a good title. I saw that Pepper had the title to all and more than he possessed to transfer. It was prejudicial to the co. that any one party should have the control. I had no right to suppose that Dean was still a large shareholder through his friends, nor indeed that he was interested in the co , unless he had sold defendant upon the success of the co., which I did not know, whatever impressions I may have entertained, not founded on fact. I should have said that I did not know, as the transfer to Pepper would not have prevented a confiscation of the property in equal am't; the question seemed to ask opinion on that point.

25. By same. If you regarded the stock as bona fide the property of Pepper, what benefit was he to derive by the sale of the
194 stock to be paid for by its net dividends? If Pepper, as you say, showed you a list of names, including T. A. Nelson and others you have named, and which he said was furnished by Dean, how did you account for the fact, if the transfers were intended to be bona fide, that Dean, after assigning his stock to Pepper, was direct-

ing to whom it should be assigned by Pepper? Please explain how this was understood by you, Nelson and the others at the time.

Answer. I do not know. I thought Pepper capable to determine his own interest. If there was any understanding between Dean and Pepper outside of transfers and papers I do not know what it was; nor do I know why Dean had given certain names to Pepper.

26. By same. If you and Nelson, and the other gentlemen who purchased the stock from Pepper, to be paid for by the earnings, understood the transactions to be bona fide, how did you ac-
195 count for the fact that the transaction was kept secret? Would not the knowledge that the stock was for sale have invited competition and secured the sale of the stock on better terms, for have you not already stated that the stock at the time was worth from ten to twenty-five per cent. above par in cash?

Answer. I have answered that we accepted Pepper's proposition; that he related names and stated terms; that he did not offer to sell or dispose of a majority of the stock; that it was he who wished it kept quiet. In the first sale the co. could, by a distribution of stock, be made more popular. I knew the sale was valid, and looked to my own interest and not to Capt. Pepper's, who offered what he said, and I believed inducements.

27. By same. But did not Pepper in fact dispose of all the stock and then leave the city for the n orth?

Answer. I think the transfer in July disposed of all his remaining stock, after which he left Memphis. I don't know where he
196 went; think he went north.

28. By same. What were, at the time of this transaction, the personal and business relations of yourself and Thomas A. Nelson? What, if anything, did you pay him for the ten shares of the 204 assigned by him to you?

Answer. We were personal friends. He was president and I csshier of the Bank of West Tennessee. I did not pay anything for the ten shares, having sold my own it was transferred to keep me eligible as a director in the co.

29. By same. Did yourself, Nelson, and the other gentlemen to whom Pepper assigned the stock, remain in Memphis during the war? If any of them did not, when did they leave the city? If before the federal forces took possession of that city, how long before, and where did they reside after that and until the end of the war? Were either Dean or Pepper in Memphis after July, 1861, until the federal forces entered the city?

197 Answer. I believe all remained except T. A. Nelson, J. J. Murphy and myself. Mr. Nelson and I were ordered out of Memphis, May 28, 1862, in charge of the assetts of the Bank of West Tennessee, by the confeder ate forces; we both remained in the south till the close of the war; except Mr. Nelson, who returned to and remained in Memphis from, I think, Nov. 2 to Ap'l or May, '63. It was understood that J. J. Murphy was on the staff of Gen'l Polk, in confederate service. As far as I know, neither Pepper nor

Dean were in Memphis from soon after the last sale in July, 1861, until in '62, after the occupation of Memphis by the U. S. forces.

BEN. MAY.

Sworn to and subscribed before me this 30th Sept., 1867.

ISAAC MORRISSON,
U. S. Com'r.

198 *Exhibit A.*

For value received, I hereby transfer and assign to James H. Pepper, fifteen hundred shares in the capital stock of the Memphis Gas Light Company, which have been paid up in full.

In witness whereof I have hereunto set hand the 23d day of May, 1861.

JNO. SHELBY,
Att'y for T. Dean.

Exhibit B.

For value received I hereby transfer and assign to James H. Pepper, ninety-three and one-third share in the capital stock of the Memphis Gas Light Company, which have been paid up in full.

In witness whereof I have hereunto set hand the 23d day of May, 1861.

ABED LIMISTER,
Att'y for T. Dean.

199 *Exhibit No.* 1.

For value received, I hereby assign and transfer to Ben. May sixty-three shares in the capital stock of the Memphis Gas Light Company, which have been paid up in full.

In witness whereof I have hereunto set my hand the 20th day of July, 1861.

JAMES H. PEPPER.

Witness:

Exhibit No. 2.

For value received, I hereby transfer and assign to Ben. May thirty (30) shares in the capital stock of the Memphis Gas Light Company, which have been paid up in full, the same being part of the stock conveyed to me by T. Dean, on the 23d of May, 1861, and no other stock.

In witness whereof I have hereunto set my hand the 11th day of June, 1861.

JAMES H. PEPPER.

Witness:

200 *Exhibit No. 3.*

For value received, I hereby transfer and assign to Ben. May one hundred and fifty-four shares in the capital stock of the Memphis Gas Light Company, which have been paid up in full, the same being part of stock conveyed to me by T. Dean, on the 23d of May, 1861.

In witness whereof I have hereunto set my hand the 20th day of July, 186 .

JAMES H. PEPPER.

201 In equity in Circuit Court of U. S., district of West Tennessee, at Memphis.

Deposition of T. A. Nelson.—Filed Sept. 26th, 1867.

THOMAS A. NELSON AND WIFE
vs.
THOMPSON DEAN.

Interrogatories to be propounded to complainant, Thomas A. Nelson, on his examination as a witness for complainant in this cause.

Int. 1. State how much stock of the Memphis Gas Light Company you bought of Capt. James H. Pepper, and when and where you made the purchases, and on what terms as to payment. If other persons bought at the same time, state who they were, and how much they bought respectively.

202 Int. 2. State fully with whom you made your negotiations, whether with Capt. Pepper in person or not, and state fully all the circumstances. Were the purchases of said stock made by you after an investigation into the business of the company? If so, state what Capt. Pepper had to do with this investigation. State the full history of the transaction, and state particularly whether the purchases were made in good faith, and as absolute purchases or not.

Int. 3. What did you do with the stock so purchased by you?

Int. 4. If you left Memphis about the time of its occupation by the army of the United States, will you state when and why you left, and where you went and when you returned, if at all, and how long you remained, and, if you again went away, why you did so, and under what circumstances, and by whose order; and state where you

203 went when you left the second time, and how long you then remained away from Memphis, and where you were during the interval; and also state where your wife was during this interval.

Int. 5. If at any time after the 6th of June, 1862, and during the war, you saw the defendant, Dean, state when and where it was, and if in any interviews with him the sale of stock in the Gas Light Company by Pepper to you was discussed, state fully all that passed between you and him on the subject, and particularly state all if anything that passed between you and the said Dean in reference to the dividends accrued and paid upon the said stock to you; state dis-

tinctly whether or not you offered to pay over to him the dividends which you had received upon said stock; and if you did, state all that you said to him and that he said to you on that subject.

204 *The answer of Thomas A. Nelson.*

Answer to int. 1st. I purchased from James H. Pepper stock of the Memphis Gas Light Co., viz: On or about the 11th day of June, 1861, fifty shares, the par value of which was $5,000; and on or about the 20th day of July, 1861, 217 shares, the par value of which was $21,700. The purchase was made in the gas office at Memphis, Tenn., and the terms were as set forth in the note or obligation which will be filed in this cause. I made two purchases of stock of said Pepper. In the first, various parties, viz., Ben. May, C. B. Church, J. J. Murphy, J. J. Worsham, Frazer Titus, W. B. Willer, C. De Loach, and perhaps others purchased stock at the same time and on the same terms as myself. I do not recollect the amount purchased by each party respectively, but the entire amount purchased by all the parties, including myself, was about 40 or $50,000 subsequently, viz: On or about the 20th day of July, 1861, J. J. Murphy, Ben. May, C. B. Church and myself purchased about $73,000 of the same stock from the same
205 party. By contract with him, the parties paid him $20,000 or thereabouts in cash, and gave their respective notes or obligations for the balance of the stock, (about $53,700,) in payment of the amount of stock transferred to each party respectively. The whole am't purchased by me was about $26,700. I sold and transferred, soon after making the purchase, 63 shares of the stock, leaving $19,400 to cover the am't of my notes to said Pepper, in accordance with our contract, besides 10 shares transferred to Ben. May, as hereafter stated.

Answer to int. 2nd. I negotiated the trade with Capt. James H. Pepper in person. My attention was first called to the subject of the trade by J. J. Murphy, who told me that Capt. Pepper wished to sell some of his stock in the Gas Co. At his suggestion, I went to the gas office and saw Pepper. He exhibited me and others who were present, and who afterwards become purchasers of stock,
206 a statement showing the condition of the co., which to a great extent influenced me in making the purchase. He showed by the statement that the value of the stock was greater by over 25 per cent. than the price which he proposed to take for it. The purchases of the stock by me was bona fide, and made in good faith, and after due deliberation of the advantages likely to arise therefrom.

Answer to int. 3. I transferred 13 shares of the stock on which there was no lien to C. De Loach, and 50 shares to N. G. Bruce, on the 20th M'ch, 1862. I transferred $1,000 of the stock, or 10 shares, to Ben May, and made the following endorsement thereon, viz.: "Transferred subject to the provisions of a mortgage made by me which is on record in the register's office of Shelby county, Tennessee."

Subsequently, to wit: on the 26th of April, 1862, having made no payment on the stock then held by me, I transferred it to my wife, Miraim W. Nelson, in her own right, making the following
207 endorsement thereon viz.: "Transferred subject to the provisions of a mortgage made by me, which is on record in the register's office of Shelby county, Tennessee, the said M. W. Nelson assuming to comply with the provisions of the same."

Answer to int'g't'y 4th. I left Memphis on the same day it was occupied by U. S. troops, (6th June, 1862,) having been ordered several days previous by the then confederate authorities to have the effects of the Bank West Tennessee, of which I was president, removed south, and I went there mainly for the purpose of assisting to take care of and preserve the said effects. I went to Miss'i, where I remained until Oct. following, when I returned to Memphis, where my family had remained. I remained in Memphis until about the 5th April following, ('63,) having been ordered to leave the city with my family a few days previous, for reasons as stated in Special Order No. 52, from Maj. General Hurlbut. The original order,
208 which was served upon me by the deputy provost marshal, is hereunto attached, marked "T. A. N." on the upper margin. After leaving Memphis with my family, I went to Miss., thence to Ala., and thence to Ga., where I remained until about the first of October, 1863, when I came near to Memphis and addressed a communication to Gen. Hurlbut, asking for permission to return to the city, which request was refused by Gen. Hurlbut in writing. I then returned to Ga., and a few months removed to Ala., where I resided until the close of the war.

My wife went south with me when I left Memphis under this order, and remained with me during my stay.

Answer to int'g't'y 5th. I saw the defendant Dean in Oct. or Nov., 1862, soon after my return to Memphis. He expressed a wish to have an interview with me, and by appointment I met him in the back room of the gas office. We conversed about the sale and purchase of the gas-light stock and the dividends which had been
209 declared and paid to me. I told him that the purchase had been made by me in good faith and should be carried out in like good faith; that I had left the first dividend at my credit in the office of the Gas Co., hoping he would bring or send my note and receive the am't of the dividend, according to the contract with Capt. Pepper, and I had only withdrawn it from fear it might be seized by the confederate authorities, a danger of which I had had an intimation; that I regarded all the dividends declared and received by me as justly belonging to him as the holder of my notes, and I was then prepared, and unequivocally offered to pay him the am't which I had received as dividend on my stock. He refused to receive it, and said that he regarded the contract as forfeited, because of the non-payment of the dividends, and that he would get a military order and take possession of the gas works. I explained to him the
210 impossibility of paying him the dividends, when received by me, because both he and Pepper were on one side of the mili-

tary lines and I on the other (at Memphis) when they were paid to me. He said I might have paid it to Mr. Shelby, who was his agent. I told him that I had offered to do so, but Mr. Shelby said he did not have the note on which to enter the proper credit, and only offered to give his receipt, without exhibiting, or offering to do so, any power of attorney or authority from the def't Dean or Capt. Pepper. Under such circumstances I declined paying him the money. Shelby died, I think, before the occupation of Memphis by the U. S. troops.

In the conversation with Dean, and before he threatened to get the military order placing him in possession of the gas works, he solicited me to transfer, or have transferred to him, the stock which he said was forfeited. This I declined doing.

I had no other conversation with the defendant Dean on the subject. I repeat that in the conversation referred to I did explicitly tell defendant that I was prepared to pay him the money I
211 had received as dividend on the 204 shares of stock, and did offer to pay the said amount of money to him, and he then and there declined to receive it from me, as I have before stated.

Further deponent saith not.

T. A. NELSON.

Subscribed and sworn to before me this 9th day of August, 1867.

ISAAC MORRISON,
U. S. Com'r.

T. A. N. OFFICE OF THE DIST'T PROVOST MARSHALL.
Memphis, Tenn., March 31st, 1863.

"*Headquarters 16th Army Corps, Memphis, Tennessee,*
"29 *March,* 1863.

"SPECIAL ORDERS, No. 52. * * * * *

"II. A cowardly and murderous attack has been made by guerrilas on a passenger train near Moscow, containing women, chil-
212 dren and citizens, resulting in the capture of part of the passengers, and the robbery of all.

"Notice was distinctly published on the 4th January, 1863, by General Order No. 10, of the district of Memphis, that such an outrage would be retaliated by the means therein described.

"It is therefore ordered, that Col. D. C. Anthony, provost marshal of the district of Memphis, forthwith select from the secessionists or rebel sympathizers within this city ten families * * * and cause them to be sent south of the line of the United States forces, not to return.

"By order of Maj. Gen'l Hulburt.

"HENRY BINMORE,
"*Ass't Adj't Gen'l.*"

Mr. THOMAS NELSON:

In compliance with the above order, you are notified that within three days you will remove with your family south of the lines of the United States forces, not to return.

213 You will report at the office of the district provost marshal for a pass at the time of your departure.

Lieut. Zeph. C. Bryan, ass't pro. mar. gen'l, will see that this order is executed.

D. C. ANTHONY,
Col. & Dist. Pro. Mar.

Cross-interrogatories to be propounded to T. A. Nelson, a witness for the complainant in this cause.

Cross-int'y 1st. Are you not one of the plaintiffs in this case?

Cross-int'y 2nd. You state in reply to int'y 2nd, that the purchase of said stock by you was bona fide. State whether or not the obligation you gave does not express the terms upon which said sale was made, and the conditions thereof.

Cross-int'y 3rd. State distinctly whether you ever complied
214 with the terms of said sale. or whether your wife, to whom you transferred said gas stock, ever complied therewith.

Cross-int'y 4th. In the conversation with Mr. Dean, referred to in your answer to int'y 5th, did he not tell you that you had failed to comply with the terms of sale, and he regarded the stock as forfeited; and did you, in that conversation, make the slightest pretence that you had complied with your contract? When you offered to hand Mr. Dean the dividends, was it not long after you had failed to comply with the terms of sale? Did you ever pay the dividend to any agent of Mr. Dean?

BULLOCK & ANDERSON,
Atty's for Def't.

215 Answer of Thomas A. Nelson to cross-interrogatories of plaintiffs:

Ans. to cross-int'y 1st. I am the husband of Miriam W. Nelson, for whose benefit this suit was brought, and I suppose that I am joined with her as complainant in the suit.

Ans. to cross-int'g't'y 2nd. The obligation which I gave for the stock, as I understand it, does express the terms upon which the sale of stock was made to me, and the conditions thereof.

Ans. to cross-int'g't'y 3rd. I have complied with the terms of the contract as fully as it was in my power to do. I have fully explained in my direct examination what I have done, and my offer to Mr. Dean and to Mr. Shelby to perform my part of the contract. No payment was made on the obligation by my wife or myself, for the reasons stated in my direct examination.

Ans. to cross-int'g't'y 4th. Mr. Dean did say to me, as I have stated in my direct examination, in answer to int'g't'y 5th, that he regarded the contract as forfeited because of the non-payment
216 of the dividends. I did not, in the conversation with Mr. Dean, make the "slightest pretence" that I had complied with the contract, but stated the reasons for not doing so, as set forth in my direct examination. I offered to pay Mr. Dean the divi-

dends in Oct. or Nov., 1862, which was 6 or 8 months after I received the last dividend, and about 9 or 10 months after I received the first. I never paid the dividends to any agent of Mr. Dean.

T. A. NELSON.

Subscribed and sworn to before me this 9th day of August, 1867.

ISAAC MORRISON,
U. S. Com'r.

Cross-examination of the defendant.—Continued.

5th. Please examine the three assignments of stock made to you by Pepper now shown you and hereunto attached and numbered 1, 2, and 3, and state whether these are not correct copies of the several assignments of stock made to you by Pepper.

217 Answer. I do not know, not having the original certificate before me, but presume they are correct copies; but do not recollect the expressions in the transfer when made.

6. By same. The assignments numbered 1 and 2 have the same date, July 20th, 1861; state how it occurred that the 63 shares which you paid for in full, and the 154 shares you purchased to be paid for out of the earnings of the stock, were assigned by instruments, one without remark, and the other as assigning to you stock which had been assigned by Dean to Pepper on the 23 of May, 1861, "and none other," and made on the same day, if both lots of stock stood on the same footing as the property of Pepper.

Answer. I have no recollection of the expression being made on the assignment of the 154 shares, but, as stated before, I presume it was so written on the transfer. At the time I received the transfer

218 I had it in contemplation to sell the 63 shares for which I paid cash, but don't recollect whether or not I requested Capt. Pepper to divide the certificate to meet my expectations.

7. By same. Where was Dean at the time you purchased the stock, and where did he reside?

Answer. I don't know his precise whereabouts at the time of the purchase. My understanding was that he resided in Cincinnati, Ohio.

8. By same. How much stock did you understand Dean owned in the Memphis Gas Light Company immediately before the war; and did you understand that he had assigned all right of it to Pepper?

Answer. I do not know, but understood that he owned a large amount, and that he did not assign all to Pepper. Pepper told me that some was assigned to Mr. Williamson. I know nothing about particulars in regard to it.

9. By same. Who was Mr. Williamson?

219 Answer. He was president of the Gas Co.

10. By same. What was the condition of public affairs in the city of Memphis in May, June and July, 1861? Was the rebellion then organizing? Were vigilance committees and threats of confiscating the property of northern men?

Answer. There was great excitement at that time on account of the rebellion. There was what was called a vigilance committee here during the summer and fall of 1861. I heard talk on the streets of confiscation, but I knew of no move being made to that end.

11. By same. What was the cash value of the stock in the Memphis Gas Light Co. at the time you made the purchase from Pepper?

Answer. I do not know, but thought at the time I made the purchase that it was worth above par. Capt. Pepper so assured me, and an examination made by Mr. May, at my request, substantiated what Pepper stated.

220 12. What disposition did you make of the 63 shares of stock you bought from Pepper, for cash? If you sold it, what price did you sell it for, and how long did you sell it after you made the purchase?

Answer. I think I sold it to Mr. Bruce and Mr. De Loach; the price paid for it was par; it was sold very soon after I made the purchase, perhaps within a day or two, or three.

13. By same. What was the opinion and judgment of yourself and the other gentlemen who were connected with you in the purchase of stock from Pepper, to be paid for by the net quarterly dividends thereon, as to the length of time it would require on these terms for the stock to pay for itself?

Answer. I don't know the opinion of other purchasers, but my own opinion was that it would pay the principal in six years, and possibly the interest also. That was, of course, contingent on the growth of the city, the quantity of gas consumed, and the

221 price charged for it, and the contingency of accidents, losses, &c.

14. By same. Taking everything into the account, at the time you made the purchase, within what time in your then opinion would it require for the net dividends to pay for the stock, principal and interest?

Answer. I thought it probable that the dividends would pay the am't due on the purchase in 6 or 8 years.

15. By same. What was the motive that induced Pepper to sell stock which was then worth its par value in cash for simply the dividends thereon for 6 or 8 years? State exactly what you understood at the time to be his motive for making such an unusual sale.

Answer. I suppose he thought it his interest to make the sale on the terms of the contract. I knew nothing about the motives which influenced him, but took it for granted that he feared the loss of the stock, on account of the war then pending.

222 16. By same. Was not Pepper at the time a citizen of the city of Memphis; and if so, why should he fear the confiscation of the stock?

Answer. He was a citizen of Memphis at the time of the sale, but stated his intention to leave soon after making the last sale, which he did. I know no reason why he should fear confiscation if he remained.

17. By same. Your understanding, then, at the time was, that Pepper was anxious to leave Memphis on account of the pending rebellion, and made the sale of stock to prevent its being confiscated after he had gone north?

Answer. My understanding was that Pepper wanted to leave because he did not want to join either army in the war. I do not know that he made the sale of stock from fear of confiscation, but thought it probable that such was the case.

18. By same. How many of the gentlemen who were co-
223 operating with you in this stock were at the time favoring the then movement to take the State of Tennessee out of the Union? What was your own position on that subject?

Answer. I do not know how many of those who purchased stock at the same time I did who favored taking the State of Tenn. out of the Union. I was opposed to the war in its early beginning, but favored it when it became sectional. At the first vote on that question I voted against it; at the second I am not certain that I voted at all; if I did, it was for it.

19. By same. When was that last vote taken?

Answer. I don't recollect precisely; it was in the summer of 1861.

20. By same. Where did Pepper inform you he was going to when he effected a sale of the stock, and how long had he been secretary of the gas co. before that time, and who was his successor?

224 Answer. I do not recollect that I had any information about his intentions after leaving Memphis. I think he was secretary of the gas co. for 1 or 2 years previous to July, 1861, but am not certain. Wm. H. Fitch was his successor as secretary of the gas company.

21. By same. For what purpose and upon what consideration did you sell the ten shares of the 204 you bought from Pepper to Benj'n May?

Answer. I transferred the 10 shares to Ben. May, to make him elegible as a director, he having sold his stock. I rec'd no consideration other than a stipulation that Pepper's lien was to continue on the stock to secure the purchase money, and that if he rece'd any dividends they should be paid to Pepper according to the terms of purchase.

22. By same. Did you not receive $3,672 as dividends on the 204 shares of stock, and have you or Mrs. Nelson or Benjamin May ever paid to Pepper or Dean, or any person else, any sum of money whatever for or on account of the 204 shares of stock; and have
225 you or your wife or Benjamin May in way whatever expended any sum of money, or other thing of value on account of the same?

Answer. I did receive that sum or about it as dividends on the stock, as stated in my direct examination. Neither Mr. May, nor my wife or myself, have ever paid any money to Pepper or Dean or any one else on account of the 204 shares of stock, Dean having refused to receive the dividends collected by me when he advised me that he held my notes or obligations.

23. By same. You have said that you purchased this stock in good faith; state whether it was the opinion, at the time of the purchase, of yourself and of the other gentlemen who acted with you, that it was an act of good faith to avail yourselves of the fears of Pepper, occasioned by the rebellion, to make so unusually advantageous a bargain for yourselves?

226 Answer. In making the trade with Pepper, so far as I was concerned, I regarded him as a first-rate business man, and understanding what he was doing, and he assured me that he had consulted with Dean, who advised him in his course in selling the stock. I regarded either of them as fully equal to myself in making a trade, and I accepted Pepper's proposition because I thought it was to my advantage to do so, and think it was in every sense of the word an act of good faith, and did not suppose that Pepper was acting from fear of any bodily harm.

24th. By same. If Pepper was not acting from fear of any bodily harm, what was the nature of the fear that induced him to make so unusual a contract, and to do so with the averred intention to leave the city? What was he afraid of?

Answer. I do not know the motive which influenced him, and did not inquire. I don't know what he was afraid of, or that he was afraid of anything.

T. A. NELSON.

Sworn to before me this 26 Sept., 1867.

ISAAC MORRISON, *U. S. Com'r.*

227 [Copy.]

(1)

For value received, I hereby transfer and assign to T. A. Nelson one hundred and fifty-four shares in the capital stock of the Memphis Gas Light Company, which have been paid up in full, the same being part of the stock conveyed to me by T. Dean on the 23rd May, 1861.

In witness whereof I have hereunto set my hand the 20th day of July, 1861.

JAMES H. PEPPER.

[Copy.]

(2)

For value received, I hereby transfer and assign to T. A. Nelson, sixty-three shares in the capital stock of the Memphis Gas Light Company, which have been paid up in full.

In witness whereof I have hereunto set my hand the 20th day of July, 1861.

JAMES H. PEPPER.

228 [Copy.]

(3)

For value received, I hereby transfer and assign to T. A. Nelson fifty shares in the capilal stock of the Memphis Gas Light Company, which have been paid up in full, the same being part of the stock conveyed to me by T. Dean on the 23rd of May, 1861, and no other stock.

In witness whereof have hereunto set hand the 11 day of June, 1861.

JAMES H. PEPPER.

229 In the Circuit Court of the United States for the district of West Tennessee.

Agreed facts.—Filed September 27th, 1867.

THOMAS A. NELSON AND MIRIAM W. NELSON and Ben. May, *vs.* THOMPSON DEAN. } In chancery.

It is agreed by the parties in the above-entitled cause that on the hearing thereof the following matters and facts set up by the defendant's answer shall be taken as true, viz:

1st. That the instruments in writing that are made exhibits to said answer and filed therewith and marked Exhibit A, Exhibit B, Exhibit C, and Exhibit D, were executed by the said Thomas A. Nelson, acknowledged by him, and delivered by him to the said James H. Pepper, and by him assigned to defendant, Dean,

230 as stated in his answer, and that said Exhibits B and D were recorded as alleged in said answer.

2nd. That ten shares of said stock were transferred by said Thomas A. Nelson on the books of the company to Benjamin May, as stated in the amended and supplemental bill, making said May a complainant, and the remaining 194 shares to his wife, Miriam W. Nelson, as stated in the original bill; that these transfers by said Thomas A. Nelson were voluntary, without other consideration than the undertaking on the part of both said Benj. May and Miriam W. Nelson, taking the same charged with the purchase money and its proper share thereof, according to the notes (Exhibits A and C) given by said Thomas A. Nelson when he purchased the stock from Pepper; and it is admitted that said Thomas A. Nelson, before making said transfers, received from the Gas Company certain dividends

231 on said 204 shares of stock, according to the statement hereto attached, marked 1; that these dividends were paid to him at Memphis, Tenn., while that place was under the control and in possession of the military and civil authorities of the rebellious league known as the Confederate States of America; that both Pepper and defendant, Dean, were, during all the time from July, 1861, until June 6th, 1862, in the loyal States and beyond the rebel mili-

tary lines, while these dividends were declared and paid at Memphis, Tennessee, within said lines, and Dean held the notes given for said stock by Nelson, (Exhibits A and C to Dean's answer,) where he was, to wit, in the State of Ohio.

And it is further admitted that all the dividends earned by and declared in said 204 shares of stock since the transfer thereof by said Pepper to said Nelson, in June and July, 1861, (except the three paid to Nelson, as above stated,) have been paid to and re-
232 ceived by defendant, Dean, and have been of the dates and amounts and paid over at the time shewn by the said statement hereto attached, marked 1; that said statement, marked 1, shows all the dividends of cash and dividends of stock, when declared, and when and to whom paid and issued, on said 204 shares stock since June, 1861, to the present time.

3. That the said order organizing the said civil commission, and the rule adopted by the said civil commission, set forth in said answer and marked Exhibit E, are truly set forth in said answer; and that said order entitled "Special Order No. 247" was issued by said Brigadier General James C. Veatch, then, and for a year thereafter, commanding the district of Memphis, in the State of Tennessee, as an officer of the army of the United States, and that during that time said State was under martial law, as alleged in said answer,
233 and the courts of justice, State and federal, suspended; and that said order and the rules adopted by said civil commission are correctly set forth in said Exhibit E.

That said Beverly Searcey was appointed by said commanding officer marshall of said civil commission, as alleged in said answer, and that said civil commission was organized and the members thereof qualified at the time and in the manner set forth, and that during the period specified in said answer, at said city of Memphis, the said civil commission did exercise the powers to the extent and in the manner in said answer set forth, and that the said Exhibit F, set forth in said answer, is a full and complete transcript and explification from the records of said civil commission of the proceedings of which the same purports to be a record, and of the issuing of said order of sale and of the sale of said stock by said marshall,
234 and of the return made thereto by him; and said transcript of said record shall be deemed a true record of the proceedings therein recited as the same were had.

4th. That Barbour Lewis, captain 1st Missouri cavalry, was the president of said civil commission, and that on the sale by said marshall he issued the said order set forth in said answer as exhibit G, and that in obedience thereto, the secretary of said company transferred said stock by the two assignments filed with said answer as Exhibits H and I, to said Alexander Harlin, who afterwards assigned the same in the books of the said company to the said defendant.

KORTUCHT & CRAFT,
Sol's for Compl't.
WM. S. HOLMAN,
Sol. for Defendant.

235 "*Statement No.* 1."

Dividends declared by the Memphis Gas Light Company on 204 shares of the capital stock thereof, held by T. A. Nelson and paid by the said company to him.

When declared.	In what.	Rate of.	When paid.	Amount.
1861. Sept. 16.	Cash.	4 p. c.	Dec. 17, '61.	816 00
" Dec. 16.	"	4 p. c.	Dec. 17, '61.	816 00
1862. M'ch 17.	"	10 p. c.	Mch. 19, '62.	2,040 00
				3,672 00

Dividends declared by the said company on above 204 shares of stock, and awarded or paid to T. Dean, the said stock having been assigned to him by Alex'r Harbin, to whom it was previously assigned by order of the hon. civil commission for the district of Memphis, Tennessee:

When declared.	In what.	Rate of.	No. shares.	Amount.
1863. June 4.	Cash.	10 p. c.	204	2,040 00
" Dec. 4.	"	10 p. c.	204	2,040 00
" " 18.	Stock.	25 p. c.	making 51 shares.	
1864. Dec. 13.	Cash.	10 p. c.	255	2,550 00
1865. June 20.	"	5 p. c.	255	1,275 00
" Oct. 26.	"	10 p. c.	255	2,550 00
" Dec. 20.	"	5 p. c.	255	1,275 00
				11,730 00

236 On the 15th day of January, 1866, said company made a call on the stockholders thereof for 20 p. c. in cash (for the purpose of enlarging their works and extending their street mains) on all stock held by them, on which call T. Dean aforesaid paid to said company on said shares of stock the sum of $5,100 00.

Memphis, Tenn., M'ch 27, '66.

WM. H. FITCH, JR., *Sec'y.*

237 *Defendant's proof.—Deposition of Wm. H. Fitch, jr.—Filed 21st February,* 1867.

Deposition of Wm. H. Fitch, jr., taken before C. Cannin Smith, a notary public in and for the county of Shelby, in the State of Tennessee, at the office of the Memphis Gas Light Company, in the city of Memphis, on the 18th day of February, 1867, between the hours of 9 o'clock a. m. and 4 o'clock p. m., in the cause now pending in the Circuit Court of the United States for the district of West Tennes-

see, wherein Thomas A. Nelson et al. are complainants and Thompson Dean is defendant, in chancery on behalf of the defendant, in pursuance with the annexed notice, viz:

Wm. H. Fitch, jr., having been duly sworn, testified, in answer to interrogatories, as follows:

Question 1, by the defendant. Where do you reside, and in what business are you engaged?

238 Answer. I am secretary of the Memphis Gas Light Company, and reside in Memphis, Tenn.

Question 2. How long have you been the secretary of that company?

Answer. Since July, 1861.

Question 3. Are you acquainted with Thos. A. Nelson and Benj. May, and if so, how long have you been acquainted with them, and where have they resided?

Answer. Have been acquainted with both for about ten years, during most of which they have resided in Memphis; for a time during the war they did not reside here, but lived, I believe, south of this.

Question 4. What connection had they or either of them with the Memphis Gas Light Company in 1861 and 1862?

Answer. On 11th June, 1861, they became stockholders, and on the 23rd July, of the same year, Mr. May was elected a director to fill a vacancy, and on the 1st of March, 1862, was re-elected for the ensuing year.

Question 5. How much money did you, as secretary of said company, pay Thomas A. Nelson in 1861 and 1862, as net

239 earnings on the 204 shares of stock assigned to him by James H. Pepper?

Answer. On 17th Dec'r, 1861, paid him $1,632 00 for dividends declared Sept. 16 and Dec'r 16th, 1861, of 4 p. c. each, and on 19th March, 1862, $2,040 00 for dividend declared 17th March, 1862, of 10 p. c., all in checks on the Bank of West Tenn., of which he was president, and Mr. May cash'r, for bankable funds.

Question 6. Did he receive the money voluntarily or under protest, and how did he receipt for it? and gives copies of his receipts.

Answer. He received the payments voluntarily by coming to the office to collect them, and receipted for them, as par funds, as per copies of his receipts, to wit:

Received, Memphis, Tenn., Dec'r 17th, 1861, of the Memphis Gas Light Company, sixteen hundred and thirty-two dollars, for dividends on 204 shares declared Sept. 16 and Dec. 16th, 1861.

(Signed) T. A. NELSON.

Received, Memphis, Tenn., Dec'r 17th, 1861, of the Memphis Gas Light Company, four thousand and forty dollars for dividend on 204 shares declared March 17th, 1862.

(Signed) T. A. NELSON.

240 Question 7. When did the federal military forces take possession of Memphis?

Answer. June 6th, 1862.

Question 8. During what period had that city been under the control of the rebel forces?

Answer. From about the middle of May, 1861, it was under the control of Gen'l Pillow; afterwards, and until its occupation by federal forces, by the troops of the so-called Confederates States.

Question 9. Where was the defendant during that time?

Answer. Residing in Cincinnati, Ohio.

Question 10. Where was Thos. A. Nelson and Benj. May during that period, and in what business were they engaged?

Answer. Residing in Memphis, Tenn., or its immediate vicinity. Mr. Nelson was president, and Mr. May cashier of the Bank of West Tennessee.

Question 11. Did they, or either of them, remain in the city of Memphis after the federal forces took possession of the city?

Answer. They both left the city about the time of its occupation by national troops, Mr. May probably leaving some days earlier than Mr. Nelson, and before the day of its capture. Mr. Nelson
241 may not have left until the city was taken. Heard frequently of their being south, or within the lines of the confederate occupation.

Question 12. Were they still respectively the president and cashier of the Bank of West Tennessee, and what became of that bank?

Answer. They were respectively president and cashier of the bank. About the time of the occupation of the city by the national forces, the books, &c., of the bank were taken south. I believe Mr. May went with them. The bank has suspended doing a general banking business.

Question 13. Did said May and Nelson leave the city before or after the bank was removed?

Answer. I believe Mr. May went south with the bank, and that Mr. Nelson went a few days later.

Question 14. How long was it after the federal forces took possession of the city before the defendant visited the city?

Answer. Mr. Dean was in Memphis for several days about middle of June, 1862, as I know from report and business transacted by him in the company's office. I left the city for Cincinnati on 11th
242 of June, '62, on business for the company, expecting to see Mr. Dean, but on reaching there learned that he had gone to Memphis, and received dispatch from him, forwarded from Cairo, asking me to await his return, which I did. He has been in the city nearly every month since.

Question 15. Did Pepper own the 204 shares of stock he transferred to Nelson, or did he hold it in trust for Dean?

Answer. He owned 63 shares, which he sold to Mr. Nelson for cash, and transferred it to him by separate transfer in usual form, and clear of remark, which stock Mr. Nelson sold and transferred to others a month afterwards. Mr. Pepper never claimed to own the

204 shares transferred by him to Mr. Nelson, or that he had given any consideration for it; on the contrary, stated that he had not paid for it, and that what he was to pay, or how he was to account for it to Mr. Dean was, an unsettled matter, upon which neither had made even a suggestion. He made separate and unusual transfer of it to Mr. Nelson, designating it as "being part of the stock con-
243 veyed to me by T. Dean on 23rd May, 1861, and no other stock."

16 question. What induced Pepper, (if you know,) to transfer the stock to Nelson on the terms on which it was done, and what was the value of the stock at that time?

Answer. Being continually harrassed and annoyed by members of what was termed a safety committee, or "vigilance committee," Gen'l Pillow commanding what was called the provisional army of Tennessee, and officers under him, with repeated threats of confiscation of the stock, of taking possession of the works, office and books of the company, and of conducting its business for the benefit of the State, &c., all of which was of common report, and much indulged in by many known as prominent secessionists, minute men, &c. He told me and others that he believed that without some change he would loose possession or control of not only the stock, but also of the business of the company, (which belief was entertained by others interested in the company and the business;) and being in personal dread or fear of being forced into the rebel army, he made
244 this disposition of the stock conveyed by Mr. Dean to him, and sold his own at what he deemed a sacrifice, and within a few days afterwards (as soon as he could initiate his successor into the duties of the office of secretary of the company) he left the city and State to secure, as he expressed it, "at least peace of mind." Would have considered the stock then very cheap at its face value in gold.

17 question. What assessments, if any, have the company made on the stockholders since 1861, and how much of such assessments have the complainants, or either of them, paid? and if they have not, who has arranged the assessments on the 204 shares?

Answer. A call of 20 per cent. was made upon the stockholders on the 15th of January, 1866, payable on or before the 16th of February following. Mr. Dean paid the assessment on the 204 shares; nor was offer of payment made by any one else.

18 question. When and by whose order was the 204 shares of stock transferred to Alexander Harlin, and in whose name does it stand now?

245 Answer. On the 16th of November, 1863, the said two hundred and four shares of stock were sold on executions, favor of Thompson Dean, and transferred by the secretary of the company, in obedience to an order of the hon. civil commission of the district of Memphis, (to him directed and served by an officer of the commission, dated Nov'r 16th, 1863,) to Alexander Harlin, the purchaser; and on the 2nd of December following was transferred by him to Thompson Dean. Mr. Dean has bought and sold stock at

various times; now owns, and has at all times since, more than that amount of stock; nor has he made transfer of this especial stock, or of a like number of shares.

Interrogatories by complainant.

X-int. 1. State what kind of money or funds had been deposited by the Memphis Gas Light Company with the Bank of West Tennessee upon which the checks were drawn, which you gave to compl't Nelson, as stated in your answer to 5th direct interrogatory?

246 Was not confederate money the only currency then circulating, and paid out by the banks on checks of their depositions? Do you mean to say that your checks expressed upon their faces that they were for "bankable funds," or what do you mean by using that expression in your answer? Was not confederate money "bankable funds" at the date of both of your checks?

Answer. Up to about 20th November, 1861, notes of N. C., Ga., S. C., La., and Ky. banks generally were bankable and current. The exceptions, Bank of Cape Fear, N. C., and some few others, were not bankable, were taken by brokers on special deposite, to be checked for in kind as deposited, or at a discount. Late in October '61, confederate money was introduced into Memphis, and until near first of December following it was held at same value as exchange or bank drafts on New Orleans. At 1st Nov'r, say, 5 per cent. premium over Tenn. banks notes. and other bankable currency.

From and after about 1st January, 1862, confederate money and due bills, or notes of various railroad and other corporations,

247 of small denominations, generally made "redeemable in confederate money," constituted almost entirely the money in circulation; these were bankable without especial entry, as par funds, just as legal tender and national bank notes are now bankable as "currency." The receipts of the company were in bankable funds, as described, and were deposited in Bank of West Tenn. as "cash;" and such funds were paid out by it and other banks in the city on checks for dollars. My checks paid Mr. Nelson were drawn for dollars, no other expression as to character of funds being used. Then, as now, such a check would be for and payable in "bankable funds." I had no account with the bank for uncurrent money, nor do I know that banks kept such accounts, though brokers did. I mean by the expression "bankable funds," in my answer referred to, that the checks were not for any other than bankable funds. Confederate money was bankable at the date of both checks paid to Mr.

248 Nelson, and checks for dollars were then paid in confederate money, as they would now be paid in legal tender or national bank notes; and confederate money was then represented by this and some other banks in the city as being the best money in existence. I believe the officers of this bank were conscientious in so representing it. It continued to be bankable while there was a bank in the city.

X-int. 2. State whether or not Mr. Nelson drew the dividends in

order to save them from confiscation or seizure as the property of Dean. If he said anything to you on this subject state all that he said. Did you or not know at the time that these dividends were going to Dean or Pepper under Nelson's contracts with Pepper, and did not Mr. Nelson draw them for the expressed purpose of preserving them? Was either Dean or Pepper in Memphis at the time or represented by any agent to receive the dividends?

249 Answer. Mr. Nelson said nothing to me as to his object in drawing the dividends being to protect them from seizure or confiscation as the property of Mr. Dean; nor did I hear from him or any one else any intimation of danger that they would be seized or confiscated. At that time he said nothing in reference to them other than necessary to their collection from the company. I asked him to please call and collect his September dividends a few days after it was declared (desiring to close up all the ledger accounts that I could.) He then told me that John Shelby had been dunning him to do so, and to pay it over to him as Pepper's agent, but that he would not for two reasons; first, because he expected to pay the dividends on this stock to the confederate government; and again, because Mr. Shelby did not have his notes to indorse the payments on. In reply to my suggestions that the notes were of record in the county register's office, and that Mr. Shelby's power of attorney as agent for

250 Pepper had been, or could be recorded, and the payments could also be recorded, and that without this the unquestionable solvency of the parties made it safe from probable danger, even were his notes negotiated without the payments being duly indorsed; he replied that his first reason was sufficient, and that the course I suggested might be pursued perhaps with safety, but it would not be business like. I know that the dividends were due to Pepper in accordance with Mr. Nelson's notes given to him, for I had seen, read, copied them and their accompanying mortgages. I did not hear or know that Mr. Nelson drew the dividends to preserve them from confiscation, or that they were in possible danger of seizure, except by United States authorities, as being monies due to Mr. Nelson; believed it was through such fear that he transferred most of the stock to his wife, Mrs. Miriam W. Nelson. Mr. Pepper was represented by duly appointed agents; most of the time there was

251 a space of two or perhaps three weeks. Mr. Adams was in the city frequently—several times after his appoint as Pepper's agent, and was in the Bank of West Tennessee.

X-int. 3. Did not Mr. Nelson return to Memphis after the federal occupation of the city? If so, state when he came back, and how long he remained, and why he went away against so far as you can. Did not Mr. Nelson meet Mr. Dean in Memphis during the federal occupation within your knowledge? and if so, when was it?

Answer. Mr. Nelson occasionally returned to the city after its occupation by federal forces; heard of his being back soon afterwards—within the same month; do not remember the dates of any of his visits or of their duration; did not see him the first time. I heard of his being here, but saw him afterwards occasionally. Do not remember

of seeing him and Mr. Dean meet, but remember of both being in the city on the same day, and heard each of them speak of having seen the other, and I believe they meet on the occasion of their first
252 visits to, in which he had no agent here. Mr. Pepper on leaving here appointed and left John Shelby duly authorized as his agent to collect these monies. Shelby called frequently at the office to see who had drawn dividends for the purpose of demanding payment, and made collections of several persons similarly indebted in my presence, receiving from them the checks I had just paid them. He asked frequently if Mr. Nelson had collected his, and was much annoyed that he had not; told me that he had demanded payment of Nelson, May and others, and that he offered to give bond and security to indemnify them against possible loss on account of payments to him in the absence of their indorsement on their obligations, but that they refused to pay him under any circumstances. Mr. Shelby died late in fall or early in the winter of '61. Soon after his death Mr. Jno. D. Adams, of Little Rock, Ark's, was appointed attorney or agent in his stead. By request of Pepper I notified Mr. Nelson and others of his appointment the
253 city; do not know why Mr. Nelson did not remain here permanently; had some conversation with him in the summer or early in the fall of '62. He then seemed confident, and expressed it as his firm belief that the southern confederacy would succeed in establishing its independence; do not remember what month this occurred in, but remember that we meet and talked on the sidewalk, near corner of North Court and Main streets, and I fully believe that it was this confidence, his business interests, and his dislike for the existing state of things in the city, that kept him from remaining here.

X-int. 4. Who has received the dividends upon the said 204 shares, which have been declared since those you mentioned as paid to Nelson? State fully what dividends have been so declared, and when and to whom the same were paid.

Answer. All dividends declared on this stock since those mentioned as having been paid to Mr. Nelson, havd been paid to Mr.
254 Dean, and within a short time after they were declared and made payable, dividends have been declared as follows, to wit: June 4th, 1863, cash 10 p. c.; Dec. 4th, 1863, cash 10 p. c.; Dec. 18, 1863, in stock 25 p. c.; Dec. 13, 1864, cash 10 p. c.; June 20 1865, 5 p. c.; cash payable after July 10th, 1865. Oct. 26th, 1865, cash 10 p. c. payable after Nov. 10, 1865; Dec. 20, 1865, cash 5 p. c, payable after Jan'y 10th, 1866; Jan'y 15th, 1866, a call of 20 p. c. was made by the co. and paid by Mr. Dean and stock issued therefor. April 2nd, 1866, and dividends of 5 p. c. cash; Aug. 4th, 1866, dividends of 10 p. c. cash payable after 10th Aug't '66, and Aug't 4th, 1866, dividends in stock of $33\frac{1}{3}$ p. c.; Dec. 17th, 1866, dividends of 10 p. c. in cash payable after 1st January, '67; and no other dividends or calls have been made, paid or collected, since those refered to.

WM. H. FITCH, JR.

STATE OF TENNESSEE, *County of Shelby, ss:*

Sworn to and subscribed before me this 18th day of February, A. D. 1867.

C. CANNING SMITH,
Notary Public.

In the Circuit Court of the United States for the diitrict of West Tennessee.

255 *Depositions of James H. Pepper and Thompson Dean. Filed.—Agreement of counsel.*

THOMAS A. NELSON *et al.*
vs.
THOMPSON DEAN. } In chancery.

It is agreed by the parties that the depositions of James H. Pepper and Thompson Dean, may be taken in the above-entitled cause on behalf of the defendant, in the city of Cincinnati, on the State of Ohio, before any notary public of said city, on the interrogatories and cross-interrogatories following, viz·

Of James H. Pepper.

By the defendant:

1. What connection had you with the Memphis Gas Light Company in 1861?

2. Did you transfer to Thomas A. Nelson, one of the com-
256 plainants, 204 shares of the capital stock of said company, and if so, at what time or times, on what consideration, and under what circumstances, and who was the actual owner of the stock?

3. Did Thomas A. Nelson know who the stock belonged to, and what connection had he, if any, with the causes which induced you to make the contract transferring to him the stock?

4. What was the actual value of the stock when you made the transfer?

5. What amount was paid to you by the complainants or either of them on account of the stock or its nett earnings?

6. What relation did Thomas A. Nelson or Benjamin May bear to the insurrection in the State of Tennessee against the government of the United States.

By the complainants:

Cross-int. 1st. Did you sell any other stock in the Memphis Gas Light Company in 1861 besides the 204 shares. If you did,
257 state how much you sold and when and where and to whom, and at what prices and on what terms and whose stock it was. If you sold any stock of yonr own, state how much, and to whom and on what terms you sold it.

X-int. 2d. If you should state in answer to the direct-examination that the 204 shares of stock belonged to Thompson Dean, will you now state fully in answer to this question whether or not you had authority from Mr. Dean to make the sale, and whether Mr. Dean was consulted about it before it was closed. If you left Memphis and went north after making the trade, but before closing it, did you not go to see Mr. Dean, and did you not close it after consulting him? State all the facts on this subject.

258 *Of Thompson Dean.*

By the defendant:

1. How are you interested in the above suit?
2. State all the circumstances under which you transferred 204 shares of the capital stock of the Memphis Gas Light Company, if you made such a transfer in 1861 to James H. Pepper, and for what purpose the transfer was made?
3. How much, if any, of the nett earnings of said 204 shares of stock has been paid to you by the complainants, or either of them, and what connection have you had with either of them at any time on the subject of said payment?

By complainants:

X-int. 1. If you state in answer to the 2d direct-interrogatory that you transferred 204 shares of stock in the Memphis Gas Light
259 Company to Pepper, state fully when and how the transfer was made, and what the said Pepper did with the said 204 shares of stock. If he sold it, did he or not make such sale with your knowledge and approval?

X-int. 2nd. If in answer to the 3rd direct-interrogatory you shall state any conversations between you and the complainants, or either of them, in reference to payment for said 204 shares of stock, state when and where and in whose presence such conversations occurred? Did or did not complainant Nelson at any time offer to pay to you the dividends which he had received upon the said 204 shares of stock. If he did, state when and where it was, and all that passed between you and the said Nelson at the time on the subject?

260 It is further agreed that the official certificate of such notary public shall be a sufficient authentication of such depositions; that no dedimus or commission shall be required, and that the depositions so taken and certified by such notary, shall be subject to all legal exceptions on the grounds of competency and relevancy.

Feb'y 13, 1867.

WM. S. HOLMAN,
Sol. for Defendant.
KORTECHT & CRAFT,
Sol's for Compl't.

In the Circuit Court of the United States for the district of West Tennesse.

Depositions.

THOMAS A. NELSON, *et al.*
vs.
THOMPSON DEAN. } In chancery.

261 Depositions taken before me, Stephen Coles, a notary public, within the county of Hamilton, and State of Ohio, on behalf of the defendant in the above-entitled cause, in pursuance with the annexed agreement except as to date.

On this 21st day of Febr'y, 1867, Thompson Dean, being duly sworn, testified in answer to the interrogatories and cross-interrogatories hereto attached as follows, viz.:

1st question by the def't: How are you interested in the above suit?

Ans. I am the defendant.

2nd by same. State all the circumstances under which you transferred 204 shares of the capital stock of the Memphis Gas Light Co.; if you made such a transfer in 1861 to James H. Pepper, and for what purpose the transfer was made?

Ans. I was residing in Cincinnati, Ohio, in 1861, and owned a large amount of the stock of the Memphis Gas Light Co., and was induced to transfer it to James H. Pepper to make some dis-
262 position of it, by which the property or some part of it, might in some way be secured to me, as I dare not go to Memphis on ac. of my personal safety on ac. of the rebellion then organizing against the United States government; and was induced by the said Pepper, (who was at the time secretary of the Memphis Gas Light Co.,) to make such transfer to him with a view to such protection. I received no consideration from said Pepper for said transfer to him, and that Pepper was simply to hold the stock in trust for me. Afterwards Pepper transferred 204 shares of said stock to Thomas A. Nelson, for which he took his two notes with mortgages on the stock, being the notes and mortgages mentioned in my answer in this case heretofore sworn to by me. I received the notes and mortgages from Pepper immediately after his return from Memphis to Cincinnati, Ohio, in 1861.

3rd by same. How much, if any, of the nett earnings of
263 said 204 shares of stock has been paid to you by the complainants or either of them, and what conversation have you had with either of them at any time on the subject of such payment?

Ans. I never received any sum whatever from Nelson or either of the complainants for or on ac. of the nett earnings thereof. I met the said Thomas A. Nelson in Memphis, Tennessee, on the street after the federal forces took possession of that city in 1862, and I think late in that year, and made an appointment with him to meet

me in the office of the Memphis Gas Light Co., on the next day, which he did; then and there, I asked him what he proposed to do about the payment of the nett earnings of the 204 shares of stock which he had received from the secretary of the said co., on ac. of the said stock; he replied that he was not disposed to pay it to me, because he might have to pay it again to the confederate gov-
264 ernment; I told him I would guarantee against any loss if he paid me the money; he still declined to pay me, and I then told him I could have to seek my remedy at law. He spoke in the conversation of the amounts he had received as the dividends on the 204 shares; I think it was in the neighborhood of $3,672 00. This was the last and only conversation I had with him on the subject. He was aware at the time that I held the notes and mortgages referred to and was the rightful owner of them. I told him so and that I had them in the office with me. Neither of the complainants have at any time paid me anything on ac. of the stock or on ac. of the notes and mortgages.

Cross-interrogatories.

By the complainants:

1st cross-interrogatory. If you shall in answer to the 2d direct interrogatory, state that you transferred 204 shares of stock in
265 the Memphis Gas Light Company to Pepper, state fully when, and how the transfer was made, and what the said Pepper did with the said 204 shares of stock. If he sold it, did he or not make such sale with your knowledge and approval?

Ans. The transfer of the 204 shares of stock by me to Pepper was made by power of attorney; this power of att'y was made at Cincinnati, Ohio, and I think I sent it to him at Memphis, or I may have handed it to him at Cincinnati.

I am certain, however, that the paper by which the transfer was made was executed by me in Cincinnati. Pepper had come to Cincinnati from Memphis a short time before the transfer was made, and advised me to do so as the only way to protect the property. Pepper afterwards transferred the stock to Nelson, and brought me his notes and mortgages for the same, being the notes and mortgages above referred to. Pepper was very much alarmed about the condition of
266 affairs at Memphis, and told me it was not safe for me to go there. He had gone to Memphis and assumed the position of secretary at my instance having previously resided in Covington, Ky. He was a gentleman in whom I had unlimited confidence.

Pepper was authorized to make any disposition of the stock he might deem proper in order to protect it from seizure by the rebel authorities. There was no understanding between Pepper and myself as to the amount of stock that was to be transferred to Nelson. I knew or expected that he would dispose of the stock to such parties in Memphis as he might select. As above stated I afterwards received from him the notes and mortgages given to him by said Nelson.

2nd by same. If in answer to the third direct interrogatory you shall state any conversation between you and the complainants,

267 or either of them, in reference to payments for said 204 shares of stock, state when and where and in whose presence such conversation occurred.

Did or not complainant Nelson at any time offer to pay you the dividends which he had received upon the said 204 shares of stock. If he did, state when and where it was and all that passed between you and the said Nelson at the time on the subject.

Ans. I refer to my third answer above, as to the time and place of the conversation between myself and the said Nelson. I am not certain that any person was present at the time the conversation occurred though my recollection is that W. A. Fitch, jr., secretary of the co., was at the office at the time. There were two rooms in the office. I think he was in one of them, but I do not know that he heard the conversation.

268 Said Wilson did not at any time offer to pay me the dividends which he had received upon the said 204 shares of stock.

I have in my 3d answer stated fully my recollection of the conversation between myself and Nelson.

T. DEAN.

The further taking of these depositions is adjourned in consequence of the inability of the other witness to be present any sooner until Monday, 25th February, 1867, then to be continued at the same place and between the same hours.

STEPHEN COLES,
Notary Public.

MONDAY, *February 25th*, 1867.

The further taking of these depositions is resumed pursuant to adjournment.

James H. Pepper being duly sworn, testified in answer to the interrogatories hereto attached as follows, viz:

269 1st question by def't. What connection had you with the Memphis Gas Light Co. in 1861?

Ans. I was the secretary of that co. in 1861.

2nd. By same. Did you transfer to Thomas A. Nelson, one of the complainants, 204 shares of the capital stock of said company; and if so, at what time or times, on what consideration, and under what circumstances, and who was the actual owner of the stock?

Ans. Without reference to the papers I could not state exactly the No. of shares, but I think it was 204 shares that I assigned to Thomas A. Nelson. It was done, I think, about the month of June, 1861. I am not certain whether the whole 204 shares were assigned at one time or at two different times. The stock which I assigned to Nelson (except 63 shares of my own which I sold to Nelson for cash,) was transferred to me, together with other stock in that co., by

270 Thompson Dean for the purpose of protecting it from seizure,

if possible. The transfer was made from Dean to me on my suggestion. I came to Cincinnati from Memphis for that purpose. The transfer was made to me by Dean without any consideration, and I afterwards assigned 204 shares of the stock (I think that was the amount) to said Nelson and took from notes and mortgages which I delivered to Dean on my return to Cincinnati. My motive in making the transfer to Nelson was that I was harrassed both by the civil authorities of the city of Memphis and by the military authorities under Gen. Pillow and others in the service of the rebellion. I was very anxious to leave Memphis on ac. of the organized rebellion, and was determined to do so, and I made the arrangement with Nelson to transfer him the stock as the best arrangement
271 I could make, transferring at the same time to other persons in Memphis and the south the residue of the stock transferred to me by Dean in the same manner, and disposed of all my own stock, and soon after left Memphis. Dean was much the largest stockholder in the co., and he and myself owned more than three-fourths of the entire capital stock. I disposed of all my stock for cash, but at a great sacrifice, and disposed of all of Dean's in the manner I have mentioned.

3rd by same. Did Thomas A. Nelson know who the stock belonged to, and what connection, if any, had he with the causes which induced you to make the contract transferring to him the stock?

Ans. I think Thomas A. Nelson knew exactly how I held the stock and for what purpose. Nelson was living at that time in
272 Memphis, and, I think, was giving encouragement to the rebellion. If it had not been for the rebellion neither Dean nor myself would have sold the stock for anything like its par value.

4th by same. What was the actual value of the stock when you made the transfer?

Ans. In the absence of the rebellion I should have regarded the stock at 50 per cent. above its par value, and could have been sold at, at least, 25 per cent above its par value.

5th by same. What amount was paid to you by the complainants, or either of them, on account of the stock or its nett earnings?

Ans. Neither of the complainants ever paid me anything on ac. of the stock or on ac. of its nett earnings.

6th by same. What relation did Thomas A. Nelson or Benjamin May bear to the insurrection in the State of Tennessee against the government of the United States?

273 Ans. My understanding was that they were both encouraging the rebellion.

Cross-examination.

By complainant:

1st quest. by complainant. Did you sell any other stock in the Memphis Gas Light Company, in 1861, besides the 204 shares? If you did, state how much you sold, and when and where, and to whom and at what price, and on what terms, and whose stock it

was. If you sold any stock of your own, state how much, and to whom and on what terms you sold it.

Ans. I sold all of my own stock, I think some 200 shares, I think about the month of June, 1861. I think 63 shares to Nelson, and the rest to other parties, to whom I transferred portions of Dean's stock. I am not certain as to the names, but I believe John D. Adams, Col. Williamson, J. J. Murphy, C. B Church, Ben.
274 May, T. A. Nelson, and perhaps others whom I have forgotten. The stock transferred to me by Dean, at its par value, amounted to about $160,000, say 1,600 shares. This I transferred in different amounts to the persons above named, all on the same terms, taking their notes and mortgages of the same character as those taken from Nelson.

The other persons than those above named I do not now call to mind, but they were all citizens of Memphis, except John D. Adams, who resided in Little Rock, Arkansas, to whom a part of the stock was transferred. I cannot state at this time the portion assigned to each. I sold my own stock at par, or perhaps a fraction less than par. I think I took $20,000 for $20,600 of stock. I could not answer more definitely than I have without reference to books and papers not now within my reach.

I can only say in general terms that I sold all my own stock,
275 and transferred all of Dean's stock, taking notes and mortgages, which I delivered to Dean. At the time of the transfer Dean was then in Cincinnati, where he resided; and as soon as I sold my stock and transferred Dean's, as above stated, I left Memphis to join my family in the north, and did not return to Memphis until after the federal troops took possession.

2nd. By same. If you should state in answer to the direct examination that the 204 shares of stock belonged to Dean, will you now state fully, in answer to this question, whether or not you had authority from Mr. Dean to make the sale, and whether Mr. Dean was consulted about it before it was closed. If you left Memphis and went north after making the trade, but before closing it,
276 did you not go to see Mr. Dean, and did you not close it after consulting him? State all the facts on this subject.

Ans. I had authority from Dean to make the best disposition I could of the stock, to protect it from seizure. I went to Cincinnati to see Dean on this business, and to consult him about the business, but not particularly as to transferring these 204 shares to Nelson. The arrangement between Nelson and myself for the transfer of the 204 shares was made after my return to Memphis from Cincinnati. The mode by which I proposed to protect the stock was understood between Dean and myself before I returned to Memphis, but not the particular persons to whom the transfers were to be made, though I think he suggested some of the persons to whom the transfers were made.

I had stated to him fully the course pursued by the vigi-
277 lance committee of Memphis and the military and civil authorities of that city towards myself and the company, and of their demonstrations to seize the effects of the company. It was

this state of things that induced him to make the transfer to me, and induced me to make the transfers to Nelson and others. When I left Memphis I gave John Shelby, (after making the transfers,) of that city, a power of attorney to receive the dividends from Thomas A. Nelson and others, to whom the transfers were made; I think they were all aware of that.

JAMES H. PEPPER.

I, Stephen Coles, a notary public, in and for the county of Hamilton, and State of Ohio, do hereby certify that Thompson Dean and James H. Pepper were by me first severally sworn to testify the truth, the whole truth and nothing but the truth, and that the de-
278 positions by them respectively subscribed as above set forth were reduced to writing by myself in the presence of the witnesses respectively and were respectively subscribed by the witnesses in my presence, and were taken on the 21st and 25th days of February, 1867, as above set forth, at the place and between the hours in the annexed agreement specified, and that I am not counsel, attorney or relation of either party or otherwise interested in the event of this suit.

[NOTARIAL SEAL.] STEPHEN COLES,
Notary Public for Hamilton County, Ohio.

Notary's fee	$15 00
And stamps	25
	$15 25

Paid by def't T. Dean.

[Stamp 5]

279 On equity side Circuit Court, U. S.

THOMAS A. NELSON AND WIFE and Ben. May, *vs.* THOMPSON DEAN.

Additional cross-interrogatories to be propounded on behalf of complainant to James H. Pepper, who has been examined as a witness for defendant.

Additional x-int. 1. Was not the gas-light stock which is in controversy in this suit sold to complainant Nelson in two lots, viz: $5,000 worth on 11th June, 1861, and the remaining $15,400 on 20 July, '61?

Add. x-int. 2d. If you shall answer that the said stock was sold in two parcels or lots, will you now state distinctly whether or not in the interval between such sales, to wit, between June 11th, 1861 and July 20, 1861, you did not meet def't Dean in Louisville, or elsewhere, and confer fully with him about said sales and receive

280 from him his full approval thereof? State fully the facts as to Dean's knowledge and approbation of the said sales.

Add. int. 3rd. Did you or not at the same time when you made the sale to complainant Nelson make sales of other stock belonging to defendant Dean to J. J. Murphey, Ben. May, C. B Church, and on the same terms on which the sales to complainant Nelson were made? State the facts fully on this subject.

Add. x-int. 4. Did you not sell other stock to Nelson, May, Murphey and Church at the same time when you sold them def't Dean's stock, and as part of the same transaction? and if so, upon what terms? Did you not on the 20 July, 1861, sell to said parties $53,000 worth of stock belonging to said Dean, and $20,000 worth belonging to yourself; and did you not make it a condition of the sale that they

281 should pay you $20,000 of the purchase money in cash; and did they not accordingly pay you $20,000 in cash for your stock so sold them? State the facts fully as to this.

Add. x-int. 5. State whether or not the sale of the said stock by you to Nelson and others were made in good faith, and with the understanding and expectation that the contracts would be carried out in good faith? And did you or not make to said purchasers as an inducement to the purchase an exhibit of the business of the Gas Light Company showing the stock to be worth more than par at the time?

Add. x-int. 6. During the months of April, May, June and July, 1861, did you or not know the defendant, Dean, in conversations or in letters addressed to you to express his sympathy with the southern States in the war then existing? State fully so far as you know what were the sentiments of said Dean, at the term named above, on this subject?

282 Add. x-int. 7. If you have in your possession any letters or letter written to you by defendant Dean, in April, May, June or July, 1861, in which he expressed his sentiments and feelings in regard to the war then existing between the north and the south, will you produce such letter or letters and make the same part of your deposition? If the letters received by you from said Dean at that time are not now in your possession, state where they are and what has become of them?

Add. x-int. 8. Did you or not at sometime in the year 1861, exhibit to T. A. Kendig a letter written to you by defendant Dean, in which he expressed his sympathies and opinions in regard to the southern people in connection with the war then existing? If you did, produce said letter and make it a part of your answer if you can, or state

283 what has become of it. If you did exhibit such a letter to said Kendig and cannot now produce it, state fully what has become of it, and as nearly as you can, state its contents as relating to this subject?

Answer to the 1st additional x-inter. propounded above:

1st. answer. I believe it was sold to the complainant Nelson in two lots at or about the dates named in the interrogatory and in the amounts mentioned.

Answer to the 2nd additional x-inter. propounded by the complainants above:

2nd. ans. My recollection is that all this stock which I transferred to T. A. Nelson was transferred subsequent to my interview with Dean, and I do not recollect to have seen Dean in the interval between the dates of the different transfers. I have testified in a former deposition that I had an interview with Dean upon this
284 subject and I now testify that to the best of my recollection these transfers were all made subsequent to that interview. I have already testified in the deposition referred to that Dean had a full knowledge of the terms and manner of my transfer of said stock.

Answer to the 3d additional x-inter. of complainant:

3rd. ans. I made at the same times transfers or sales to J. J. Murphy, Ben. May, C. B. Church, and others on the same terms upon which the sales to the complainant Nelson were made. I do not now remember the amounts transferred to each.

Answer to the 4th int. propounded by the complainants:

4th. ans. I did sell other stock which belonged to myself, to Nelson, May, Murphy and Church, at the same time when I sold them def't Dean's stock. They all knew the fact that part, say about $20,000 or a little upwards, belonged to me in fact, while the
285 remainder of the stock which I held in my name, had been transferred to me by Dean without consideration and that it really belonged to him. I sold to these parties my own stock for $20,000 in cash, and by agreement at the same time as near as I remember transferred to them the Dean stock on the terms named in my former deposition and in the obligation which they executed in payment for it. I don't remember either the exact amounts transferred or the dates of the transfers, but presume both the amounts and the dates named in the interrogatory are correct.

The condition was that they were to pay me as above named for my own stock, which they did, and that they were to take the other stock on the terms named; and while the transactions were at the same time, and to some extent, conditions, my recollection is that the transfer on the books of the Gas Light Co. each showed dis-
286 tinctly which was my own and which was the Dean stock, and the parties had a full knowledge which was my own and which was held by me in trust for Dean.

Answer to 5th inter. propounded by complainants:

Ans. 5. I believe I stated in a former deposition that I was induced to enter into these sales and transfers in consequence of the deranged condition of the country, and would not have transferred either my own or Dean's stock had the country been at peace. In making these transfers I made the best arrangement I could to protect the stock, and they were made in good faith, and I supposed would be carried out in good faith. I did make to the purchaser an exhibit of the business to satisfy them that the stock was worth more than par, and would pay for itself at an early day.

Answer to 6th int. propounded by complainants:

287 6th answer. I do not now remember what Dean's expressions of sentiment were at the times named in the interrogatory, nor do I remember ever to have received a letter from him containing expressions of sympathy for the south, and if I ever did, I have no such letters of his at this time, as I have already testified in a former deposition, which I delivered to T. A. Nelson at Memphis, the same having been taken by him at that place after my deposition first referred to was taken.

Answer to 7th inter. propounded by the complainants:

7th answer. As I before stated, I do not remember ever to have received such letter or letters from Dean, and of course cannot produce them.

Answer to 8th inter. propounded by the complainants:

8th answer. I have no recollection of having exhibited to T. A. Kendig a letter written to me by defendant Dean, in which he

288 expressed his sympathies and opinions in regard to the southern people in connection with the war then existing; nor do I remember ever to have received from him such a letter.

JAMES H. PEPPER.

I, Stephen Coles, a notary public in and for the county of Hamilton and State of Ohio, do hereby certify that the above-named witness, James H. Pepper, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing answers to the interrogatories hereto attached, by him subscribed as above set forth, were reduced to writing by himself, and were subscribed and sworn to by said Pepper in my presence, on the 26 day of April, 1867, at my office, No. 6 East Third street, in the city of Cincinnati, Ohio, and that I am not counsel, attorney, or relation of either party, or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand and affixed my official seal on this 26th day of April, A. D. 1867.

[SEAL] STEPHEN COLES,
Notary Pubilc.

289 Whereupon, afterwards, to wit, at the March term, 1868, of the said court, and upon the 12th day of said month of March, the said cause coming on for final hearing before the honorable Connally F. Trigg, judge, when the following decree was rendered therein:

Injunction bill.

THOMAS A. NELSON and WIFE and Ben May
vs.
THOMPSON DEAN.

This cause having been heard and submitted at the last term of this court on the bill and amended bill, the answers thereto and the exhibits and proof, was by the court taken under advisement; and

now on this, a day of the regular March term, 1868, of the court, the court being fully advised as to the questions of law and fact arising in the case, and being of opinion that complainants are enti-
290 tled to the relief prayed for in their original and amended bill:

It is, therefore, by the court ordered, adjudged and decreed that defendant Dean do forthwith transfer on the books of the Memphis Gas Light Company to Mrs. Miriam W. Nelson, wife of compl't, Tho's A. Nelson, for her sole and separate use, one hundred and ninety-four shares of the stock of said Gas Light Company now held by him, and do also transfer upon said books to complainant, Ben May, ten shares of the stock of said company now held by him, so as to restore to the said Mrs. Miriam W. Nelson and the said Ben. May, the said amount of the said stock as the same stood in their names respectively on the books of the said Memphis Gas Light Company prior to the proceedings of the said defendant Dean in the civil commission of the district of Memphis, to divest the same out of the said complainants.

And it is further ordered, adjudged and decreed by the
291 court that the clerk and master of this court do take and state an account, after giving notice to the parties or their solicitors of the time and place, upon such proof as may be in the record, and as may be produced before him, showing what amount of dividends have been declared and paid upon the said 204 shares of the stock of the said Memphis Gas Light Company since the sale of the same to the said Thomas A. Nelson by his vendor, Pepper, and when and how and to whom the said dividends were paid

And that the said clerk and master, at the same time and upon the same notice, do take and state an account between complainant, T. A. Nelson, and defendant Dean, as the assignee of said Pepper, which account shall show the amount of principal and interest of the notes or obligations executed by said Nelson to said Pepper for said 204 shares of the said stock of the Memphis Gas Light Company,
292 with all amounts of dividends and profits received on said stock by said Dean, applied as credits according to the laws of Tennessee, as to the application of partial payments, and shewing what balance, if any, is now due upon said obligations, or what balance, if any, is due from said Dean, after paying said obligations in full.

And that the clerk and master do also state and report any other account desired by either party, and deemed by him to be pertinent.

And it is further ordered, adjudged and decreed, that the clerk and master do report with said accounts any proof taken by him, and do make his report during the present term, if practicable, and if not, then to the next term of this court, and until the coming in of said report; all other matters are reserved.

From which decree of the court the defendant, by his solicitor, prayed an appeal to the next term of the Supreme Court of
293 the United States to be held in the city of Washington on the first Monday of December next, which appeal is granted upon defendant's giving bond with security in the sum of six thousand dol-

lars, payable to complainants, before the clerk of this court, within ten days from this date.

And afterwards, at the term last aforesaid, and upon the 23rd day of March, 1868, the following order was made in said cause:

Original bill.

T. A. NELSON AND WIFE AND Ben May
vs.
THOMPSON DEAN.

This day came the defendant's solicitor and moved the court for an extension of time to the defendant in which to execute an appeal bond in this cause, which motion was granted and the time ex-
294 tended so as to include to-day; and thereupon defendant tendered his appeal bond in this cause, with James M. Williamson and J. J. Murphy as sureties, in the penalty fixed by the former order of the court, given before and approved by the clerk.

UNITED STATES OF AMERICA, *District of West Tennessee*:

I, Abram S. Mitchell, clerk of the United States Circuit Court for the district of West Tennessee, do hereby certify, that the foregoing 295 pages of manuscript contain a full and true copy of the record and proceedings in the cause in equity in said court, wherein Thomas A. Nelson and Miriam W. Nelson, his wife, and Ben. May are complainants, and Thompson Dean is defendant, as the same remain of record and on file in my office.

Witness my hand and the seal of said court at office in the city of Memphis this 15th day of December, A. D. 1868.

[SEAL.] A. S. MITCHELL, *Clerk*.
ISAAC MORRISON, *D. C.*

295 Know all men by these presents that we, Thompson Dean as principal, and James M. Williamson and J. J. Murphy as sureties, are held and firmly bound unto Thomas A. Nelson and Miriam W. Nelson, his wife, and Ben. May in the penal sum of six thousand dollars, for the payment of which well and truly to be made we bind ourselves, our heirs and representatives jointly and severally firmly by these presents. Sealed with our seals and dated this 23d day of March, A. D. 1868.

The condition of the above obligation is such that whereas the said Thompson Dean has prayed and obtained an appeal to the Supreme Court of the United States to be held in the city of Washington on the first Monday of December next, from the decree of the United States Circuit Court for the district of West Tennessee, on the 12th day of March, 1868, in the cause of Thomas A. Nelson and wife and Ben. May, complainant, and Thompson Dean, defendant: Now if the said Thompson Dean shall prosecute his said appeal with effect, or

in case of failure shall pay and satisfy all costs and damages that may be decreed against him by said Supreme Court, then the above obligation to be void, otherwise to remain in full force and effect.

[SEAL.] T. DEAN,
By WM. A. FITCH, JR.,
Att'y in fact.

[SEAL.] JAS. M. WILLIAMSON.

[SEAL.] J. J. MURPHY.

Signed sealed and acknowledged before and approved by me.
A. S. MITCHELL. *Clerk.*
ISAAC MORRISON, *D. C.*

Endorsement: No. 5. T. A. Nelson and wife and B. May vs. Thompson Dean. Appeal bond. Filed March 23d, 1868. A. S. Mitchell, clerk. Isaac Morrison, D. C.

296 U. S. Circuit Court.

Bill of costs.

THOMAS A. NELSON *et al.* *vs.* THOMPSON DEAN. } No. 5.—In equity.

Filing bill, 10; certificate, 15; cert. bond, 30; 3 acknowledgments, 75; cert. 15; filing, 10; 1 copy, 1 00; issuing summons and seal, 1 20; certificate, 15; filing amended bill, 10; cert. 15; 3 certificates, 45; filing 2 demurrers, 20; copy bill, 2 70; 23 filings, 2 30; 23 certificates, 3 45; filing cross-bill, 10; 2 certif's, 30; filing answer, 10; 2 certificates, 30; 5 continuances, 75; 8 orders, 1 20; final decree, 1 50; order for cert's, 15; order for execution, 15; copying and filing cert's, 40; certificate, 15; making docketts, &c., 3 00; entering and filing 1 return, 25; enrolling cause, 37 80; appeal bond, 75; 4 acknowledgements, 1 00; filing, 10; certificate, 15; record for Supreme Court, certificate and seal, $89 20		$150 50
Marshal W. W. Coleman, 1 summons		2 00
Comm'r Morison, 9 depositions		70 00
Solicitors:		
Docket fee of compl't on 7 depo	17 50	
" " " on trial	20 00	
		37 50
" " def't on 3 depo.		7 50
		$267 50

Rec'd payment,

A. S. MITCHELL, *Clerk.*
ISAAC MORRISON, *D. C.*

T. A. NELSON, *et al.*
vs.
THOMPSON DEAN. } Extract from exhibit F to answer.

Summons.

CIVIL COMMISSION,
District of Memphis.

To the marshal of civil commission greeting:

You are hereby commanded to summon T. A. Nelson, Meriam Nelson, and Benjamin May, if to be found in the district of Memphis, personally to be and appear before the civil commission of the district of Memphis, within three days, at the court-room, then and there to answer the petition of Thompson Dean. Herein fail not, and have you then and there this writ.

Witness John C. Grierson, recorder at court-room, 1st day of May, 1863.

JOHN C. GRIERSON,
Recorder.

Bond for costs.

I acknowledge myself the above-named petitioner's security, and bind myself to defendants in the sum of two hundred and fifty dollars ($250) for prosecuting this suit with effect, or payment of all costs and damages incident thereto.

Witness my hand and seal this 1st day of September, 1863.

JOHN W. LEFTWICH, [SEAL.]

Indorsed.—Issued 1st day of September, 1863.

J. C. GRIERSON, *Recorder.*

Marshal's return.

Came to hand 1st day of September, 1863. T. A. Nelson, M. Nelson, and B. May not found in my district. September 3, 1863.

B. SEARCY, *Marshal.*
By H. A. ROBERTSON,
Deputy Marshal.

Publication.

THOMPSON DEAN
vs.
T. A. NELSON. } No. 503. Civil commission for the district of Memphis.

The defendant in this case will take notice that it appears from the return of the marshal of this commission that the

defendants, T. A. Nelson, Meriam Nelson, and Benjamin May, are non-residents of the district of Memphis: It is ordered that publication be made once a week for four successive weeks, requiring said defendants to enter their appearance in this case on or before the 8th day of October, 1863, and plead, answer, or demur to the plaintiff's petition, or the same will be taken for confessed, and set for hearing *ex parte*.

JOHN C. GRIERSON,
Recorder.

W. S. HOLMAN, *Attorney for plaintiff.*

Proof of Publication.

THOMPSON DEAN
vs.
T. A. NELSON, MERIAM NELSON, and BENJAMIN MAY. } Civil commission.

STATE OF TENNESSEE, }
District of Memphis. }

Personally appeared before me, John C. Grierson, recorder of said commission, William H. Fitch, jr., of lawful age, who being by me duly sworn, makes oath and says, that the pendency of the above-entitled action, a copy of which notice is above hereunto attached, was published once a week for four consecutive weeks, commencing on the 8th day of September, 1863, and ending on the 29th day of September, 1863, in "*Memphis Bulletin*," a daily newspaper of general circulation printed and published in the city of Memphis, in the county of Shelby, and State of Tennessee. He further says, that he, the said affiant, has no interest in the above-entitled suit. He further says, that said publications of said notice were made on the 8th, 17th, 23d, and 29th days of September, 1863. And further saith not.

WM. H. FITCH, Jr.

Subscribed and sworn to before me this the 9th day of October, 1863.

JOHN C. GRIERSON,
Recorder.

Indorsed: Filed 9th October, 1863.

JOHN C. GRIERSON,
Recorder.

UNITED STATES OF AMERICA, }
District of West Tennessee. }

I, Abram S. Mitchell, clerk of the United States circuit court for said district, do certify that the foregoing three

pages contain full and true copies of the summons, cost bond, marshal's return, publication, and proof of publication, as contained in the transcript of the suit of Thompson Dean against Thomas A. Nelson, Meriam Nelson, and Benjamin May, in the civil commission of Memphis, which transcript is filed as Exhibit F to the defendants's answer in the suit in equity lately pending in said United States circuit court wherein Thomas A. Nelson, Meriam Nelson, and Benjamin May are complainants and Thompson Dean is defendant, and which suit was taken by appeal from said circuit court to the Supreme Court of the United States.

Witness my hand and the seal of said circuit court this 21st day of March, A. D. 1870.

[L. S.]

A. S. MITCHELL, *Clerk.*
ISAAC MORRISON, *D. C.*

It is consented that the record may be considered as amended by the author.

WASHINGTON, 28th *April*, 1870.

P. PHILLIPS,
Solicitor for Complainant.
W. S. HOLMAN,
Solicitor for Defendants.

6 Rod - 204
19 Row 284
10 Men 502
2 Mill - 106 -

20 to 3 Cir —
Nov 1 1870

Supreme Court of the United States.

No. 205

THOMPSON DEAN, Appellant,

vs.

THOMAS A. NELSON, MIRIAM W. NELSON, BENJ'N MAY, Appellees.

Appeal from the Circuit Court of the United States for the District of West Tennessee

BRIEF FOR THE APPELLANT.

W. S. HOLMAN,
Counsel.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

DECEMBER TERM, 1869.

THOMPSON DEAN, Appellant,

vs.

THOMAS A. NELSON, MIRIAM W. NELSON, BENJAMIN MAY, Appellees.

No. 205.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST TENNESSEE.

Thompson Dean, the appellant, who was respondent below, appeals from the decree of the circuit court for the district of West Tennessee, rendered against him in favor of the appellees, at the March term, 1868, of that court.

ABSTRACT OF THE CASE.

The bill as amended states that on or about the 11th day of June, 1861, Thomas A. Nelson purchased from James H. Pepper fifty shares of the capital stock of the Memphis Gas-Light Company, a corporation incorporated by the laws of the State of Tennessee, of $100 each, amounting to $5,000; and on or about the 20th day of July, 1861, one hundred and fifty-four further shares of said capital stock, each for $100, amounting to the further sum of $15,400; and that Pepper assigned to him said shares of stock on the books of said company on or about the dates above mentioned. That said Nelson assigned ten shares of said stock to Benjamin

May, and one hundred and ninety-four shares to his wife, Miriam W. Nelson, "as a provision and separate support" for her, but provided by the terms of the assignment to his wife "that she should take the same on the same terms and with the same incidents" as he took the same in the purchase thereof from Pepper, and that the ten shares were assigned to May on like conditions.

That Thomas A. Nelson purchased the stock at par on a credit, the two hundred and four shares for $20,400, the amount to draw interest at six per cent. from the dates of the respective purchases. "The dividends on said stock were to be applied to the payments, first, of the interest due from time to time on the stock, and the excess over the payment of the interest to the extinguishment of the principal debt, until the same should be paid in full." That the complainants had ever been willing to comply with the terms of the contracts, and had frequently offered and tendered so to do.

The bill charges that in the summer of 1862 said Dean came to the city of Memphis and set up a claim, as assignee of said James H. Pepper, to the proceeds of said stock or to the stock itself; and at a time when the State of Tennessee was without any courts, State or national, or other means of civil redress for injuries, the said Dean seized and took into his possession all the property, books, effects, &c., of said company, claiming to manage the same as "receiver," and that he transferred, or had transferred, to himself the same two hundred and four shares of stock, and denies any right of the complainants therein.

That Dean, in 1861 or in 1862, became invested with the rights of said Pepper to receive the purchase-money for said stock, "and that the matter stands the same as if the purchase had been from him instead of said Pepper."

The prayer of the bill is that the stock may be decreed to belong to the complainants, and that "a specific execution and performance of the contracts for the purchase of said stock by your orator, Thomas A. Nelson, and securing the payment of the purchase-money therefor and interest thereon, be decreed and enforced against the said defendant," and

that an account be taken of the dividends and net profits of the stock.

THE ANSWER.

The answer of Thompson Dean admits that on the 17th day of June, 1861, Thomas A. Nelson purchased of Pepper the fifty shares of stock, and on the 20th day of July, 1861, the one hundred and fifty-four shares, in all two hundred and four shares at its par value of $100 per share, in all $20,400, and that Pepper assigned the stock to Nelson, and that Nelson assigned one hundred and ninety-four shares of this stock to his wife and ten shares to May, but alleges that by the terms of the contracts between Nelson and Pepper "the purchase-money of said stock, with interest thereon at six per centum per annum, was only payable out of the net earnings of said shares of said stock, and in no other manner whatever, if such earnings were applied to such payment, and that said Nelson did not assume or incur any pecuniary responsibility whatever" in making said purchase, and that he knew at the time that Pepper held the stock in trust for him, the said Dean; that by the terms of the contracts, which are made exhibits to the answer, being notes for the amount of each purchase and morgages on the stock to secure the payments, the purchase-money was to be paid "out of the net receipts of the earnings" of the stock, such net receipts to be applied first in payment of the interest and the balance on the principal, as the quarterly dividends on the stock should be from time to time declared by the said company; and on the failure of Nelson to pay such instalments of the net earnings after the receipt of the same by the company, the whole of the respective sums of money to be due and payable, less interest and instalments paid; and that Nelson knew at the time that Pepper, who was the secretary of said company, was induced to make these contracts by the fears inspired by the gathering forces of the rebellion and the anxiety of Pepper to leave the city of Memphis "on account of the pending insurrection and return to the State of Kentucky, where he had previously resided."

The notes and mortgages and their assignments to the defendant are set forth.*

The answer further alleges that Nelson did not comply with the terms of said contracts; that on the 16th day of September, 1861, said company declared a dividend of four per cent. on said stock; on the 4th of December, 1861, a further dividend of four per cent.; and on the 17th day of March, 1862, a further dividend of ten per cent. thereon; amounting in all to $3,672, which dividends were, on and prior to the 19th day of March, 1862, (respective times being specified,) received by Nelson as net earnings of said two hundred and four shares of said stock, being three quarterly dividends thereon; and that Nelson had failed to pay the same, or any part thereof, either to him (the defendant) or to the said Pepper, and neither the said Nelson nor his wife nor said May had paid, or offered to pay, at any time, either to him or Pepper, any sum of money whatever on account of the interest or principal of the purchase-money of the two hundred and four shares of stock, and the appellant, by his answer, insists that, by the failure of Nelson to apply the next earning of the stock according to the terms of the contracts, the entire purchase-money became due and the mortgages on the stock became absolute.

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* The notes, which are in the same terms, except as to date and amount, are as follows:

Exhibit "C."

$15,400. MEMPHIS, *July* 20, 1861.

For value received I promise to pay to the order of James H. Pepper the sum of fifteen thousand and four hundred dollars, with interest at the rate of six per cent. per annum from date until paid, out of the net receipts of earnings on the sum of fifteen thousand and four hundred dollars of the capital stock of the Memphis Gas-Light Company, of the city of Memphis, Tennessee, said sum and interest being payable in quarter annual installments, the interest being first paid and balance of said net receipts then to be applied upon the principal, which said installments shall amount to such sums of money as shall be equal to the quarterly net receipts of earnings on fifteen thousand four hundred dollars of the capital stock of said company. This note and obligation being given for the purchase-money of fifteen thousand four hundred dollars of the capital stock of said company, sold and transferred to me by said Pepper; and if I fail to pay any of said installments quarterly as aforesaid, after the receipt by said company of said net earnings, then the full sum of fifteen thousand and four hundred dollars, with interest, less interest and installments paid, shall become due and payable.

T. A. NELSON.

The answer admits that in December, 1862, after the military forces of the United States had taken possession of the city of Memphis, that having a large interest in said gas-light company he, (the defendant,) by order of Major General Hurlburt, then in military command at said city, did, in the character of "receiver," and for the common benefit of all persons interested in said company, take control of its affairs; but that, in February or March thereafter, directors and officers of said company were elected, and by successive elections have since continued to control the affairs of the company; and that General James C. Veatch, then commanding the district of Memphis, ordered the secretary of said company not to pay dividends declared by the company to disloyal owners of stock, but he denies that the rights of the complaints were affected by said receivership, but admits that he has claimed the two hundred and four shares of stock since said Nelson failed to fulfill his contracts, and since he (the defendant) had been able to visit said city; and "that he has claimed that he was justly and in good faith entitled to the two hundred and four shares of said capital stock of said company, he having been, at the time of the sale thereof by said Pepper to said Nelson, the real owner thereof, and the said Pepper only holding the same as trustee for this defendant, who then resided in the State of Ohio, which fact this defendant believes was known to said Thomas A. Nelson at the time he made said purchase." And he insists that from the terms of the contract and causes which induced Pepper to enter into such contracts "it was not conscionable for the said Nelson to enforce said contracts, even if he had fully complied with the terms thereof; but having wholly failed so to do, this defendant did claim that he was justly entitled to said stock."

The answer further states that, while claiming the benefits of the failure of said Nelson to comply with terms on which he purchased said stock, he was, in the year 1863, anxious to foreclose any rights the complainants might assert to said stock by a judicial sale thereof, as he, the defendant, and others, were seeking to increase and enlarge the business of said company.

That by reason of the rebellion the courts of justice, State and federal, in the State of Tennessee, were suspended, and the State under martial law, General James C. Veatch, a military officer of the United States, then in command in the district of Memphis, by special order No. 247, organized a court or civil commission "for the hearing and determination of all complaints and suits instituted by loyal citizens for the collection of debts, the enforcement of contracts, the prevention of frauds, the recovery of property, real and personal, and generally to perform such duties and exercise such powers as could be done by a court deriving its powers from military authority, with power to adopt such rules and regulations for the transaction of business as might be found necessary, subject to the approval of the general commanding the district, and by said special order detailed and appointed for said commission, and as judicial officers thereof, Captain Barbor Lewis, Judge Joseph Williams, and A. C. Ketcham, Esq., "and John G. Grierson recorder thereof, (a copy of which special order is set forth;*) that said commission was

*Special Order No. 247, under which this civil commission was organized, is as follows:

Exhibit "E."

HEADQUARTERS DISTRICT MEMPHIS,
MEMPHIS, TENN., *April* 25, 1863.

Special Orders No. 247.

A civil commission is hereby organized for the district of Memphis, Tennessee, to hear and determine all complaints and suits instituted by loyal citizens of the United States for the collection of debts, the enforcement of contracts, the prevention of frauds, the recovery of the possession of property, real or personal, and generally to perform such duties and exercise such powers as can be done by a court deriving its powers from military authority.

The commission will adopt such rules and regulations for the transaction of business as may be found necessary, subject to the approval of the general commanding the district. All judgments, decrees, and orders must be reported to the general commanding the district for approval.

Detail for the commission.

1st. Captain Barbour Lewis, first Missouri cavalry.
2d. Judge Joseph Williams.
3d. A. C. Ketchum, esq.; Lieutenant John C. Grierson, sixth Illinois volunteer cavalry.

The commission will meet in the chancery court room, in Memphis, on Monday, the 27th day of April, 1863, and hold its sessions without regard to hours.

By order of Brigadier General James C. Veatch.

F. W. FOX,
Assistant Adjutant General.

organized, the members thereof qualified by taking an oath to support the Constitution of the United States, and for the faithful performance of the duties of their appointment; that they adopted rules of procedure which were approved by said commanding officer, and continued at said city, in open court, to exercise the powers conferred by said special order, in the trial and determination of civil causes for the period of one year, and during all of said time said civil commission was the only civil tribunal in said city and district for the enforcement of civil rights, the ordinary tribunals of justice being, during all of that time, suspended by the actual state of war." (Pp. 34, 35, 36, and 37 of the record.)

The answer further sets up that the defendant, Dean, on the 1st day of September, 1863, filed his complaint before said court against the complainants (the appellees) to foreclose said mortgages, and sets forth the proceedings, decree for the sale of said two hundred and four shares of stock, the approval thereof by the general commanding said district, the proceedings for the sale of said stock by the marshal of said civil commission at public auction, the sale thereof to Alexander Havlin, and the asignment to him of the stock on the books of said Gas-Light Company by order of said commission, and the subsequent assignment of the same by Havlin to the defendant; and the defendant submits that by the failure of said Thomas A. Nelson to fulfill the terms of said contract, as well as by the judgment and proceedings of said civil commission and the rights acquired by him under the same, he is in equity and good conscience entitled to hold the stock against the complainant.

THE FACTS IN THE CASE.

It was agreed by the parties in writing (pp. 229, 230, 231, 232, 233, and 234 of the record) that the following facts set up by the defendant, Dean, should be taken as true.

1. The instruments (exhibits A, B, C, D,) executed by Nelson to Pepper and assigned to Dean, being the notes and mortgages set up in the answer.

2. That ten shares of the stock were assigned by Nelson to May and one hundred and ninety-four to Miriam Nelson. That these transfers were without consideration, except that the stock was charged with the payment of the purchase-money, and that before said transfers were made Thomas A. Nelson received certain dividends on said two hundred and four shares of stock, as set forth in statement marked 1; that these dividends were received at Memphis while that city was under the military control of the rebel authorities; that Dean and Pepper were from July, 1861, to June 6, 1862, in the loyal states; and that Dean held the notes for the stock where he was in Ohio, and that Dean received the dividends on the two hundred and four shares of stock, except the dividends received by Nelson; and that the statement marked 1 is true, and shows all the dividends received.

3. The organization of the civil commission and the rules thereof, under "Special Order No. 247," issued by Brigadier General James C. Veatch, "who then and for a year thereafter commanded the district of Memphis as an officer of the army of the United States;" that during that time said State was under martial law, and the courts of justice suspended, as set forth in the answer; that Beverly Searcey was appointed marshal of said civil commission, and that said civil commission did exercise the powers to the extent, in the manner, and for the period in the answer set forth; and that the said exhibit F, set forth in said answer, is a full and complete transcript and exemplification from the records of said civil commission of the proceedings of which the same purports to be a record, and of the issuing of said order of sale and of the sale of said stock by said marshal, and of the return made thereto by him; "and said transcript of said record shall be deemed a true record of the proceedings therein recited as the same were had."

4. That Barbour Lewis, captain first Missouri cavalry, was the president of said civil commission, and that on the sale by said marshal he issued said order set forth in said answer as exhibit G, and that in obedience thereto the secretary of said company transferred said stock, by the two

assignments filed with said answer as exhibits H and I, to said Alexander Havlin, who afterwards assigned the same to said defendant.

The statement marked 1, (page 235,) referred to in the foregoing agreement of facts, states specifically the three dividends on the stock received by Nelson prior to and on the 19th day of March, 1862, amounting to $3,672, and the dividends subsequently received by Dean, amounting to $11,730, and that Dean had paid a call made on the stockholders, being on the two hundred and four shares $5,100. To all of these facts the parties agreed.

The evidence taken by the parties tends to prove, and the appellant insists proves—

1. That the two hundred and four shares of stock were part of fifteen hundred shares of stock in the Gas-Light Company, transferred by Dean, who resided in Cincinnati, Ohio, through a power of attorney, on the 23d day of May, 1861, to Pepper, who was the secretary of this company, without any consideration, to secure the same, if possible, for Dean's benefit, Pepper representing to Dean that he could not safely go to Memphis, Pepper himself being the owner of $20,000 worth of the stock of this company at its par value, and that the actual value of the stock in this company was, at the time Pepper sold the two hundred and four shares to Nelson, about twenty-five per cent. above par. Nelson, in his deposition, in answer to the fourteenth cross-question, (p. 221,) says: "I thought it probable that the dividends would pay the amount due on the purchase in six or eight years."

2. That Pepper, in his eagerness to leave the South, after distributing a part of Dean's stock out among a number of citizens of Memphis, including Nelson, to be paid for by its net earnings, finally, on the 21st day of July, 1861, "transfers," to use his expression, the whole of the residue to Nelson and others, on the same terms, Nelson getting one hundred and fifty-four shares in this last transaction, taking notes and mortgages of the character set forth in the answer, and selling to those parties his own stock for cash at or about par; and on his return to Cincinnati, Ohio, immediately afterwards, trans-

ferred the notes and mortgage to Dean, and that Pepper was induced to sell his own stock at a sacrifice, and make these transfers of Dean's stock by reason of the apprehension he felt for his personal safety in the South. He says in his deposition, (p. 275): "At the time of the transaction Dean was then in Cincinnati, where he resided; and as soon as I sold my stock and transferred Dean's, as above stated, I left Memphis to join my family in the North, and did not return to Memphis until after the federal troops took possession." And again (p. 285) he says: "They all knew the fact that part, say about $20,000 or a little upwards, belonged to me in fact, while the remainder of the stock which I held in my name had been transferred to me by Dean without consideration, and that it really belonged to him. I sold to these parties my own stock for $20,000 in cash, and by agreement at the same time, as near as I remember, transferred to them the Dean stock on the terms named in my former deposition."

3. That Nelson received three quarterly dividends on the stock, amounting to $3,672, and on the federal forces taking possession of Memphis, on the 6th of June, 1862, went with Ben. May within the lines of the rebel forces, but returned to Memphis, and saw Dean there in October or November, 1862; and that he did not then, or at any other time, pay or tender to Dean the dividends he had received on the stock. He testifies (page 208, 209, and 210 of the record) that he saw Dean in Memphis in October or November, 1862, soon after his return to Memphis, and says "he expressed a wish to have an interview with me, and by appointment I met him in the back room of the gas office." "I told him that the purchase had been made in good faith, and should be carried out in good faith." "I was then prepared and unequivocally offered to pay him the amount which I had received as dividends on my stock. He refused to receive it."

Dean testifies (page 263 and 264 of the record) that he met Thomas A. Nelson in the streets of Memphis in 1862, after the federal forces took possession of the city, and thinks late in the year, and "made an appointment with him to

meet me" at the office of the Gas-Light Company "the next day, which he did." That he asked Nelson what he proposed to do about the payment of the net earnings of the two hundred and four shares of stock which he had received. He replied "that he was not disposed to pay it to me, because he might have to pay it again to the Confederate Government." "This was the last and only conversation I had with him on the subject."

W. H. Fitch, jr., the secretary of this company, testifies, (pp. 249 and 250 of the record:) "I asked him (Nelson) to please call and collect his September dividend a few days after it was declared." "He told me that John Shelley had deen dunning him to pay it to him as Pepper's agent, but that he would not, for two reasons: first, because he expected to pay the dividends on this stock to the Confederate Government; and, again, because Mr. Shelley did not have his notes to indorse the payment on. In reply to my suggestion, that the notes were of record in the county register's office, and that Mr. Shelley's power of attorney as agent for Pepper had been or could be recorded, and the payments could also be recorded, and that without this, the unquestionable solvency of the parties made it safe from probable danger, even were his notes negotiable without the payments being indorsed, he replied that his first reason was sufficient; and that the course I suggested might be pursued, perhaps, with safety, but it would not be business-like." "Mr. Shelley died late in the fall or early in the winter of 1861." "Do not know why Mr. Nelson did not remain here permanently. Had some conversation with him in the summer or fall of 1862. He then seemed confident, and expressed it as his firm belief that the southern confederacy would succeed in establishing its independence."

This is the testimony bearing on the question of the failure of Nelson to pay or tender the amount he had received as dividends on the stock, and certainly disproves any payment or offer to pay to Dean or Pepper the amount received by him as dividends on the stock.

4. That the federal forces took possession of Memphis on

the 6th of June, 1862, and that Nelson and May at that time or immediately afterwards went within the lines of the Confederate army, and that Dean was in Memphis about the middle of June, 1862, and nearly every month thereafter. (Fitch's dep., pp. 240, 241, 242 of the record.)

POINTS MADE BY THE APPELLANT.

1. The assignments of the two hundred and four shares of stock by Pepper to Thomas A. Nelson were made without any consideration whatever. There was no mutuality in the contracts. They impose no obligation on Nelson. His agreement to pay for the stock out of its own net earnings was not a valuable consideration for its assignment to him. If these contracts were executory, a court of equity would not interpose to enforce them.

Dorsey *vs.* Packwood, 12 Howard, 126.

Nor would a court of equity interpose to give effect to such contracts and aid a party to obtain the benefit of hard and unconscionable bargains, a court of equity will only aid in giving effect to a contract that is fair in all its parts and is for an adequate consideration.

Gales *vs.* Archer, 42 Barbour, 320.

Story's Equity Jurisprudence, vol. 1, §§ 239, 742, 769, 775, 793, and authorities referred to.

2. Although, in the case before the court, the stock was assigned by Pepper to Nelson, yet the reassignment of the stock by way of mortgage, the default of Nelson in performing the conditions of the mortgage, and the fact that Dean, the appellant, had acquired a reassignment of the stock without fraud, is the case upon which the appellees now ask the interposition of the court. I submit that in such case the court will consider the original contract, its fairness, and the consideration on which it was founded, in determining whether the party asking relief is in equity entitled to it, and that the court will refuse its aid, as in case of a bill for specific performance, if the original contract, if executory, ought not to

have been enforced; that the court will consider the absence of a fair consideration, and the fact that Pepper acted under actual duress in making these assignments—an actual fear, which deprived him of capacity to act voluntarily and with reasonable discretion, and that this fear was inspired by disorders and tumults of armed revolution which Thomas A. Nelson had himself aided to create; but, if he had not, Pepper still acted, in making the contracts, under influences which deprived him of his better judgment, and was induced to make contracts which he otherwise would not have made, and that too in executing a trust where from its nature he should have acted in absolute good faith. Thomas A. Nelson should not be permitted to profit by such contracts.

It may be said that Dean, either before or after these transfers of the stock were made to Nelson by Pepper, assented to or ratified them, that receiving the notes and mortgages from Pepper was such ratification; but it is clear that Dean had no option in the matter. Pepper, in whom he reposed unlimited confidence, assured him that he could not safely go to Memphis himself. (Dean's dep., p. 266.) When Pepper returned to Cincinnati with the notes and mor[illegible] whole country was involved in war, and intercours[illegible] Cincinnati and Memphis impossible. From the [illegible] of this transaction until the federal forces took [illegible] of Memphis, on June 6, 1862, Dean was unable to [illegible] in regard to this stock, discretion or judgment. His [illegible] was completely under the control of Pepper, without his being able in any material degree to control it. "A necessitous man," says Pothier, "is not a free man." Dean did assert his rights in this stock the moment it was within his power to do so.

3. The mortgages executed by Nelson to Peper are mortgages on the two hundred and four shares of stock. This is manifest from the terms of the instruments. The only interest Nelson had or could have in the Memphis Gas-Light Company or its property was shares in its capital stock. He mortgages so much of his interest in this corporation as is "represented by" so much of the capital stock. This is certainly the stock

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3. The mortgages executed by Nelson to Peper are mortgages on the two hundred and four shares of stock. This is manifest from the terms of the instruments. The only interest Nelson had or could have in the Memphis Gas-Light Company or its property was shares in its capital stock. He mortgages so much of his interest in this corporation as is "represented by" so much of the capital stock. This is certainly the stock

itself, which by the laws of Tennessee is personal property. The parties clearly intended that the mortgages should cover the shares of stock which Pepper was assigning to Nelson.

In the deposition of J. J. Murphy (record, p. 158,) he speaks of Pepper retaining "a lien or deed of trust on the stock until paid in full;" and Nelson, in his answer to the twenty-first cross-question, (record, p. 224,) in referring to the ten shares he assigned to Ben. May, says: "I received no consideration other than a stipulation that Pepper's lien was to continue on the stock to secure the purchase-money."

I submit that while the description of the property mortgaged is inartistic and unskillful, it is still in fact a full and clear description of so many shares of stock. Nelson clearly so understood when he assigned the stock to his wife and Ben. May subject to the mortgages.

It would seem to be clear that Nelson by these instruments does in fact mortgage or reassign these two hundred and four shares of stock to Pepper, subject to be defeated by the payment of the quarterly dividends thereon on the debt until paid. They were certainly intended to be and were chattel-mortgages on the stock. Such stock, by the laws of Tennessee, is personal property. (Code of Tennessee 1858, § 1487.)

4. By the failure of Nelson to perform the conditions of the mortgages, the mortgagee acquired an absolute title to the stock. "This is well established to be the legal effect of a mortgage of personal property."

Langdon *vs.* Buel, 9 Wend., 80.
12 Wend., 61.
2 Hill. on Mort., 535, 536.
Barfield *vs.* Cole, 4 Sneed, 465.

If prior to June 6, 1862, Nelson could claim to be excused from paying the dividends he had received by reason of the hostile military power which, from the testimony, it would appear he had himself contributed to organize between the city of Memphis and the domicil of the holder of the notes, no such excuse could avail after the 6th day of June, 1862, when the federal forces took possession of Memphis, or when

he met Dean in Memphis, in October or November of that year. And, considered as contracts, time was clearly of their essence.

5. Upon the failure of Nelson to fulfill his contracts, if he possessed any right or interest in this stock, it was certainly only a right in equity to redeem the stock. If the appellant had not acquired, by the assignment of this stock to him on the books of the company, any other rights than those resulting from the mortgages, Nelson, on his default in applying the dividends, certainly had no other right than that of redemption, an equitable and not a legal right; and I insist that a court of equity will not aid a party to redeem and relieve him from the consequence of his default when he seeks thereby to obtain the benefit of an unjust and unconscionable contract, which, if executory, a court of equity would not enforce.

But the right of redemption arises from the payment or tender of payment of the debt. Here the appellees, still retaining the $3,672 of dividends received on this stock, without payment or tender to the appellant of that sum or of any portion of the debts, both long since due by the terms of the contracts, seek by their bill to be reinvested with the title to the stock. The claim set up is against equity and good conscience. It is not charged by the bill that the appellant obtained the assignment of this stock to himself on the books of this company by fraud, nor is there any attempt in the evidence to establish such fraud. The appellees in their prayer for relief demand "a specific execution and performance of the contracts." While a court of equity would relieve against fraud, it will certainly give no countenance to a claim so clearly against equity, or aid in giving effect to contracts neither reasonable or just, and that too after a voluntary default, from which only a court of equity could relieve.

If the proceedings had before the civil commission at Memphis, under which Alexander Havlin, by an order which at least for the time was the law, and under which the appel-

lants acquired, without even the pretence of fraud or collusion, an assignment to himself on the books of this company of the two hundred and four shares of stock, are not to be deemed in the nature of final adjudication of the matters in controversy, they are still of such authority that a court of equity would not interpose, except to restore the parties to their just rights, and remedy injustice. Here the appellees seek the benefit of an unjust and unequal contract, by relief from their own voluntary default. I insist that in such case a court of equity will not interpose its authority except to quiet the title of the rightful posssessor. A court of equity is never active in relief against conscience. (Story's Equity Jurisprudence, § 1520 and note.)

The public sale of this stock by the mortgagee would of itself extinguish the equity of redemption. (Story's Equity Jurisprudence, § 1031.)

THE CIVIL COMMISSION.

While the appellant insists that, in the case presented by the bill, answer, admitted facts, and depositions, without reference to the proceedings between the parties before the civil commission at Memphis, the appellees are not entitled to relief in a court of equity, and are not entitled to relief upon the facts stated in the bill, he presents the record of that tribunal as a perfect and complete bar to the relief claimed by the bill.

The agreement of the parties avoids any question as to the verification of the record, or of the organization of this civil commission by competent military authority, or of the necessity for such a tribunal at the city of Memphis, by reason of the suspension or overthrow of the ordinary courts of justice, State and federal, by the actual state of war, or of the continued occupation of the city of Memphis by the military forces of the United States for a much longer period than that covered by the proceedings recited in the record. Nor is there a question that this civil commission, as organized,

with judges, recorder, and marshal, duly sworn and qualified, was in fact a court of justice, exercising all the powers of a judicial tribunal in the hearing and determination of civil causes, without any change of its members, for at least an entire year. These facts are agreed to by the parties, and that the transcript which is set forth in the answer as exhibit "F" is "a full and complete transcript and exemplification, from the records of said civil commission, of the proceedings of which the same purports to be a record, and of the issuing of said order of sale, and of the sale of said stock by said marshal, and of the return made thereto by him, and said transcript of said record shall be deemed a true record of the proceedings therein recited, as the same were had;" and that on this sale, and by the authority of the civil commission, the stock was assigned to the purchaser on the books of this company, who afterwards assigned the same to appellant. These are admitted facts. (Pp. 232, 233, 234 of the record.)

That a military commander in a conquered district, in which the civil authority is overthrown or suspended, may, to aid him in the protection of private rights and to preserve civil order, establish courts of justice and other agencies of civil government, is scarcely open to discussion. The humane principles of modern international law not only recognize this power in a military commander, but would seem to demand its exercise, thus ameliorating as far as may be the severities of military law. The duty of the Federal Government to protect the rights of all of its loyal citizens rendered the application of those enlightened principles of international law to the districts of country under military occupation in the late war imperative. General James C. Veatch, commanding the military district of Memphis, a commercial city of sixty thousand people, with intimate commercial relations with many of the loyal States of the Union, was not only authorized, but it was clearly his duty, to establish in that city, while held by force of arms, such a tribunal. In this court causes were tried, judgments amounting in the aggregate to many millions of dollars were rendered and enforced, and in a city under military rule private

rights were protected and civil injuries redressed by a tribunal recognizing the rules of civil law. It would seem clear that a military commander, within his military district or department, might organize such agencies of civil government as the President of the United States as commander-in-chief of the army and navy might organize anywhere within the district of country repossessed and occupied by the national forces.

The validity of the proceedings of such tribunals, established by military power, is sustained by the writers on international law and by an unbroken series of decisions in the courts of the United States.

Jecker *vs.* Montgomery, 14 How., 498.
Cross *vs.* Harrison, 16 How., 164.
Leitensdorfer *vs.* Webb, 20 How., 176.
Hefferman *vs.* Porter, Supreme Court of Tennessee, Am. Law Reg. for January, 1870, 41.
Rutledge *vs.* Fogg, 3 Cold., 554.
The Bark "Grapeshot," George Law, claimant *vs.* Wallerstein, Masset & Co., in this court.

In the case of Hefferman *vs.* Porter, above referred to, the validity of this civil commission as a court of justice was directly in issue. In the law court of Memphis the defendant in that cause had plead in bar a judgment of the civil commission, and from the judgment of the law court of Memphis, overruling a demurrer to that plea in bar, the plaintiff had appealed. The supreme court of Tennessee, in affirming that judgment, say:

"Whatever the President of the United States, as commander-in-chief, might do if personally present, may be done by the superior officer in command of any district, unless restrained by orders, or by the peculiar nature of the service in which he is engaged.

"The establishment of legal tribunals, for the adjudication and protection of civil rights, is the most favorable condition for the conquered people. There is always more or less security in a judicial body organized according to the

forms of law, for the administration of justice according to the rules that obtain in courts of judicature. There is a dignity and responsibility about such a position that do not fail to command a decent regard to the ordinary rules of justice and right, and to mitigate the rigor of military rule to some degree of harmony with the humane theories of modern warfare.

"If, then, the power to create such civil courts exists, by the laws of war, in a place held in firm possession by a belligerent military occupation, and if their judgments and decrees are held to be binding on all parties, during the period of such occupation, as the acts of a *de facto* government, we are not able to see on what grounds we can refuse to them a like effect, when pleaded as *res judicata*, before the regular judicial tribunals of the State since the return of peace."

The record of this civil commission, set forth in the answer, presents a proceeding between the parties to this cause to foreclose the mortgages on the two hundred and four shares of stock in question. The notice by publication to the defendants in that action (the appellees in this cause) and the decree for the sale of the stock are in substantial conformity with the practice in courts of chancery under the laws of Tennessee, and the record shows that the decree was approved by the commanding general, and that the decree was enforced by the sale of the stock by the marshal of the commission, at public auction, on the notice and at the place prescribed by the laws of Tennessee, the purchase of the stock by Alexander Havlin, the assignment of the stock to him by the secretary of this company on its books by order of the commission, and its subsequent assignment to the appellant by the purchaser at the marshal's sale, with no charge or pretense of collusion. I maintain that this judicial proceeding is final between these parties, but if, by the law of the land, it was subject to be reviewed by the courts, such review could only be to ascertain whether substantial justice had been done.

I therefore respectfully submit that, upon the case pre-

sented, the appellees were not entitled to relief in a court of equity, without reference to the proceedings and judgment of the civil commission; and that the proceedings and judgment of that commission are final between the parties as to the title to the stock in question; and that upon either ground the decree of the circuit court should be reversed.

Respectfully submitted.

WM. S. HOLMAN,
Counsel for Appellant.

Supreme Court of the United States.

THOMPSON DEAN

vs.

THOMAS A. NELSON,

ET. AL.

BRIEF OF P. PHILLIPS,

OF COUNSEL FOR APPELLEES.

H. Polkinhorn & Co., Printers, D street, near 7th, Washington.

Supreme Court of the United States.

THOMPSON DEAN
v.
THOMAS A. NELSON, et al. } No. 205.

On 20 July, 1861, James H. Pepper, being then the secretary of the "Memphis Gas Light Company," sold to the said T. A. Nelson a large number of shares in said Company, some for cash at par and others at par on credit.

For the payment of the latter, the said Nelson executed his several promissory notes in favor of said Pepper, and also mortgages of the interest represented by said shares in the real estate and fixtures belonging to said company.

On the same day, Pepper transferred on the books of the company to said Nelson the stock thus sold to him.

It is impossible to mistake the legal nature of this transaction, and argument is deemed superfluous to establish that it was an absolute sale of the stock. The title was fully vested in Nelson, and the security of the note, and mortgage was all that remained in Pepper.

Nelson, for the reasons set forth in the evidence, did not pay the installments as required by the note, and the first question presented is: What was the effect of this failure upon the rights of the parties?

One effect undoubtedly resulted, to wit, that the whole amount of the note became due, and Pepper might have immediately sued at law, therefor.

But what other effect was produced by the stipulations of the mortgage? It is maintained in the brief of Appellant.

First, that this mortgage which, on its face, relates to

real estate is to be construed as a mortgage of the property sold, to wit, the stock.

Second, that on default, this being a mortgage of personalty, *the mortgagee acquired an absolute title to the stock.* (Brief, p. 14.)

The law on this subject is well established. The mortgage may be more than a lien. The title on forfeiture may vest in the mortgagee; but nevertheless, it is held by him merely as security for a debt.

Conard v. Insurance Companies, 1 Pet., 441;

The Hampton, 5 Wall., 374;

Notwithstanding that by the forfeiture, the title at law became absolute in the mortgagee, who then had the right to reduce it into possession, yet in equity, the mortgagor even of personal property, had still the right to redeem. This was considered as well settled, in the opinion delivered by Judge Nelson, in the case of Patchen v. Pierce, 12 Wend, 62;

Hutchins v. King, 1 Wall., 58;

Story, equally emphatic holds, that in mortgages of personal property, although the prescribed condition has not been fulfilled, there exists *as in mortgages of land* an Equity of Redemption, which may be asserted by the mortgagor, if he bring his bill to redeem within a reasonable time. 2 Story's Eq., § 1031.

The Equity of Redemption is a distinct estate from that which is vested in the mortgagee before or *after* condition broken. As between the parties to the mortgage, the law protects it with jealous vigilance. It not only applies the maxim "once a mortage, always a mortgage," but any limitation of the right to redeem as to time or persons by a stipulation entered into when the mortgage is executed or afterwards, is held to be oppressive, contrary to public policy, and void. By the common law, when the condition of the mortgage was broken the estate of the mortgagee

became indefeasible. At an early period Equity interposed and permitted the mortgagor within a reasonable time, to redeem on the payment of the amount found due.

The debt was regarded by the Chancellor, as it has ever been since as the principal, and the mortgage as only an accessory and security.

Clark v. Reyburn, 8 Wall., 322;

The same principles are maintained in England, as will be seen by reference to Powell on Mortgages, vol. 3, 963.

There is however this difference between mortgages of real and personal property: In the former, the right to redeem can only be foreclosed, by a proceeding in equity. In the latter, this right may be extinguished by a sale unaided by the Court.

But to make this sale effective, it is absolutely *essential that due notice of time, place, &c., be given to the mortgagor.*—

2 Story's Eq., § 1031;

Patchen v. Pierce, 12 Wend, 63;

Charler v. Stevens, 3 Denio, 35;

Hart v. Tan Eyck. 2 John. C. R., 100;

4 Kent's Coms., 139;

It is not pretended in this case that a sale by Pepper, either with or without notice, has taken place, and the the right to redeem is therefore neither lost nor impaired.

Dean, the present appellant, is the assignee of the notes and mortgages made to Pepper, and is consequently subject to the same equities.

But failing to make good his title to the stock, by virtue of the default, he claims title under a decree in a foreclosure suit, filed by him before a "civil commission," organized under the orders of a Brigadier General, for the District of Memphis, on 25 April, '63.

This title we assail on the ground, first, that the court had no jurisdiction of the cause.

In the case of the "Barque Grape-shot," the court held, that the power to appoint such a court while occupying the territory of the Belligerent was "vested in *the President as Commander-in-chief, entrusted as such with the direction of the military force by which the occupation is held.*" Applying this to the occupation of a portion of our own territory—they add what that duty is, when the territory occupied by the National forces is *foreign territory*, is declared by the court in the cases heretofore decided.

The position maintained by defendant goes far beyond this. He contends that it is sufficient if the court be authorized by "*military power*," and says he is sustained in this by "an unbroken series of decisions," (Brief, p. 18.) No definition is given as to the officer who is to exercise this "military power." If not confined to the Commander-in-chief—then it must exist in every officer in *command of a particular locality*, even though that command may not extend beyond a corporal's guard.

The case of Jecker *vs.* Montgomery involved the validity of the decree of a prize court established at Monterey. Taney, C. J., held, that *notwithstandnig the order of the President* established the court, its decrees were invalid, as no such authority could be conferred in prize causes. 13 How. 515.

In Cross *vs.* Harrison, it was held that duties on foreign goods imported into San Francisco in 1847, were legally imposed by the civil government, organized by the military commander. But the opinion expressly states, that *authority was given by the Executive* to the Commander-in-chief, on that station "to establish port regulations and regulate import duties." 16 How. 189.

In Leitzendorfer *vs.* Webb, the validity of a judgment rendered by a court in New Mexico established by the Provisional government in 1846 was sustained. This government was put in operation by General Kearney.

In the opinion, it is stated that Kearney acted "*under the sanction and authority of the United States;*" and the head note states the case thus: "*The Executive authority of the United States* properly established a Provisional government which ordained laws and instituted a judicial system, &c." 20 How. 176.

These constitute the "unbroken series of decisions," relied on by appellant to show that any officer, however subordinate his rank, when in the exercise of a military command during the late civil war, had authority to establish courts with full civil as well as criminal jurisdiction.

The jurisdiction exercised in this case cannot be sustained even upon the plea of *necessity.* Neither the preservation of peace, nor the protection due to persons or property were at all concerned in it. The communication between Memphis and Washington was open, and the Commander-in-chief could at any time have been appealed to for authority, if it were deemed necessary or proper to organize so exceptional a tribunal.

But further than this, the jurisdiction exercised in this case was not only without the consent of the Executive, but in direct *opposition to his orders.*

Dean filed his petition as assignee of Pepper for a foreclosure on the 1st September, 1863, and the decree of the "Commission" was approved on 21 October, 1863. Now, in July, 1863, on an appeal to the Executive Department from the action of this "commission" in a similar case, the Judge Advocate decided that "the civil commission of civilians and lawyers, exercising all the powers of a common law and Chancery Court established by a military commander at Memphis, Tennessee, in 1863, was a tribunal *unauthorized by military law.*" (Digest of Opinions Judge Advocate, published by authority of Secretary of War, p. 84.)

The records of the War Department, show that on the

day following this opinion, General order No. 224 was issued, directing the proceedings in the case referred to, to to be annulled, as the "commission" had no jurisdiction or authority to proceed in the same.

Another appeal in another similar case having been subsequently made to the department, the General-in-chief on 12 October, 1863, notified the Commanding officer by direction of *the Secretary of war*, that the commission can have no jurisdiction of such cases, and it was ordered, that *any proceedings of a civil nature* which may have been had in the case, be annulled and set aside, and *all proceedings of this character be discontinued.*

If the action of the executive be considered as material on the question of jurisdiction, a certified copy of these general orders will be furnished to the court on a requisition made for that purpose on the War Departmeut.

But secondly—Admitting this commission had jurisdiction of the subject matter, we yet maintain the invalidity of the decree on the ground that Nelson, the defendant, was never served with process, and could not, under the circumstance, be made a party to the suit.

The guerillas having attacked a train near Moscow, the Commander at Memphis, by Special order No. 52 caused to be selected at Memphis ten families among the "rebel sympathisers" for removal south of the line, with a prohibition against their return during the war. Mr. Nelson and his family were of this number, and left within three days, as instructed by the order of the 29 March, 1863.

The same "military power," which exiled Nelson beyond the Federal and into the Confederate lines, with a prohibition against return, a few months thereafter renders a decree *pro confesso* against him, because he did not respond to an advertisement directing his appearance, and because though "*three times audibly called*" to come into court, he made no answer.

Such a decree cannot be maintained except we adopt the fiat of arbitrary power "*sic volo, sic jubeo.*" Then no advertisement and no proclamation are necessary. But tested by the principles of universal justice, it is a mere nullity.

The law of Nations, the Acts of Congress, nay, the direct command of this "military power" itself *forbade* Nelson from appearing, even if accident had brought the publication to his notice. The law cannot create a default when the law forbids a performance.

In Sir Alexander Don's case, decided by Lord Brougham in the House of Lords, a decree was reversed which permitted a judgment against Don recovered in France without personal service, during the war to be given in evidence to avoid the plea of prescription in a suit brought against Don in Scotland after the war. Don, at the institution of the proceedings being a subject of Great Britain, resident therein. 5 Cl. & Fen. 21.

In Illinois, where the precise question has been fully considered, a decree of foreclosure founded on such an advertisement was set aside, though the statutory period of redemption had passed, The court considering that "titles thus acquired would rest on the basis of robbery, not upon a judicial divestiture of the debtor's interest recognized as just "*jure gentium.*"

Connecticut Insurance Company *vs.* Hall.
16 Am. L. R. p. 606.

In a very recent case, Judge Blatchford considers very fully the whole subject, and says: "The object of the notice must be held to have been given to apprise the debtors, that the creditor was about to sell the land, and that they must pay the debt, and thus redeem the land and stop the sale within the sixty days. The presumption must be either that the debtors saw the notice which the trustees published, or that they did not see it. If it be that they saw it, they could only have done so by means of an unlawful

intercourse, which this court cannot sanction. If the presumption be, that they did not see it, because, by reason of hostilities, it could not reach them, *it would be a fraud on them to uphold a sale made on a notice so given.*"

Kanawha, Coal Co., *v.* K & and Ohio, Coal Co.

The same doctrine is held in a case where the jurisdiction was exercised within Confederate lines against a defendant being at the time in one of the loyal states.

Cuyler *v.* Terril, decided in Georgia.

8 Am. L. R. New Series, p. 100.

By means of this void decree, Dean had the stock standing on the books of the company in Nelson's name, transferred to his own, and thus enabled him to receive from the company all the dividends arising therefrom which by agreement is stated at upwards of $11,000.

Dean, however asserts that, admitting his title to be invalid—yet, that being in possession, a court of Equity, will afford the complainant no assistance as against him, either for an account or a reconveyance, because of the character of the contract and the circumstances under which it was made.

The bill was filed by Nelson on the 20 June, 1865, immediately after the close of the war. The default is claimed on the dividends received by Nelson in December, 1861, and March, 1862. The reasons why they were not paid over to Pepper is given in his deposition. Pepper and Dean, it is admitted, "were from July 1861 to June, 1862, in the loyal states," and Nelson within the Confederate lines, p. 74.

In June, 1862, the Federal troops took possession of Memphis, but prior to that and on the same day, Nelson had left Memphis with the effects of the bank of which he was president, acting under orders of the Confederate au-

thority. In October, 1862, he returned to his family in Memphis, and continued to reside there until 5 of April, '63, when he was sent out under the "General Order" heretofore referred to. (p. 67.)

Soon after his return in 1862, he met Dean in Memphis, and then offered to pay him the dividends. This, he testifies, Dean refused, insisting that the contract was forfeited by the non-payment of the dividends at the time they were received. This statement is contradicted by Dean, and in this there is the only discrepancy on any material fact of the case.

But be this as it may, the citation of these dates shows, that there has been no *improper delay in the filing of the bill.*

The default, such as it is, is subject to adequate compensation on payment of interest; and when lapse of time arises from money not having been paid at a particular day, as this admits of compensation, it cannot be used for the purpose of avoiding a contract, for in such a case time is never treated as an essential part of the agreement; nor in such a case would a stipulation that if the whole sum be not paid at a particular day, the original bargain should be at an end, give any additional right to rescind the contract.

DeCamp v. Fray, 5, S. & R. 325.
Vernon v. Stephens, 2, P. Wms. 66.
Newland on Con. p. 238.

So a proviso in a mortgage, that the whole sum shall become due on failure to pay any one of the installments on the day, is in the nature of a penalty, against which equity will relieve upon compensation; viz: payment of the installment due, interest and costs.

Tiernan v. Henman, 16, Ill. 400.

The general rule is that Courts of Equity do not regard time as of the essence of the contract, and that relief will

be granted when the application is within a *reasonable delay*, although the party has not completed with the terms of the contract.

The doctrine of Lord Thurlow that time *could not be made* the essence of a contract in equity, we admit to be now overruled and substituted by the principle, that it will be held of the essence of the contract only in cases of *direct stipulation* or *necessary implication.*

Taylor v. Longworth, 14 Pet. 174.

Sir Samuel Rommilly thus defines these two exceptional conditions. "The cases of direct stipulation are when the parties to a contract introduce a clause expressly stating that time is to be the essence of the contract. The implication that time was of the essence of the contract is derived from the circumstances of the case; such as when the property sold is required for some immediate purpose, such as trade or manufactures; or when the property is of a determinable character, as an estate for life."

Parker v. Theorold, 16, Beav. 65.

In cases where time is not originally declared essential, it cannot be made so by either party alone. But if delay takes place, *the aggrieved party may give notice that he abandons the contract*, and if the other makes no prompt assertion of his right, he will be considered as acquiescing in such notice and as abandoning his equity for specific performance.

Adams Eq. p. 208, 5 Am. Ed.

Again, it is objected that the inadequacy of the consideration stipulated, is a bar to the relief prayed for in the bill.

If this were a bill for the *specific performance of an executory contract* the equity would be maintained; for it is not necessary that the consideration should be *adequate*, but only that it be *valuable.* The parties, themselves, are the best judges of the adequacy, and, therefore, inadequa-

cy will not be an answer in equity to the prayer for specific performance, *if not so gross as to prove fraud or imposition.*

Adams Eq. 187.

Much less would a court of equity assist in *annulling* a contract, fairly understood between parties standing on equal ground, and dealing without imposition or oppression on the ground of inadequate consideration.

Osgood v. Franklin, 2 John, Chan. Rep. p. 23.

But the present is not a bill of this kind. We stand on an *executed contract*, and ask relief only to enforce the rights which pertain to it. The distinction between the two classes of cases is well recognized and is elementary.

Thus, if the court is appealed to, to enforce a covenant to transfer stock; if it rests in *covenant* and is purely *voluntary*, the court will not execute it; but if the party has completely *transferred the stock*, though it is voluntary, yet the legal conveyance being effectually made, *the equitable interest will be enforced by this court.*

Ellison v. Ellison, 6 Ves., 662;

Pulvertoff v. Pulvertoff, 18 do., 99;

Bren v. Winthrop, 1 John. C. R., 337;

Now, if the court will grant relief on an executed contract purely *voluntary*—it would certainly not withhold it in a case where there was a *valuable* consideration, though that consideration be inadequate.

It may be stated in general terms, that where there is neither fraud, accident, nor mistake, however absurd the stipulations, the contract will be enforced

In those cases where the inequality of the bargain is so gross that the mind cannot *resist the inference of fraud*, the court interposes, not on the ground of the inequality, but because from it grossness there arises, the most *vehement presumption of fraud.*

Dunn v. Chambers, 4 Barb., S. C., 379;

Eyre v. Potter, 15 How., 60;

The inadequacy complained of in this case is, that the payments were to be made only out of the dividends received from the stock; but as these dividends were regarded as *certain to be made*, they were merely taken as the measure of the payments. Pepper, the vendor, demonstrated to the purchaser, from the books of the company, that these dividends would pay the par value at which the stock was sold in a few years—on this ground, the case as presented, does not differ from a sale of the stock at par, with specified periodical payments.

The contract in this case is certainly an unusual one; but its conditions were suggested by the seller, and though they may be not only unusual, but extravagant in the extreme, the parties being competent to contract, they will be bound in the absence of fraud, accident, or mistake.

Mr. Justice Swayne, delivering the opinion of the court, at its last term, says: "if the condition is to do a thing which is improbable or absurd, or that a thing shall happen which is beyond the reach of human power, as, that it will rain to-morrow *the contract will be upheld and enforced.* The answer to the objection of hardship in all such cases is, that it might have been guarded against by a proper stipulation. It is the province of Courts to enforce contracts, not to make or modify them. When there is neither fraud, accident, or mistake, the exercise of the dispensing power is not a judicial function.

Ship Harriman v. Emerick.

It is again objected that the complainant is not entitled to relief, because the sale of the stock was made under circumstances which constituted duress.

This matter of *duress* for the first time makes its appearance in a distinctive form in the Appellant's *Brief*, in which Pepper is described as acting "under actual duress, which deprived him of *capacity to act voluntarily, and with reasonable discretion.*" p. 13.

In answer to the interrogatory, whether he did not go north to consult Dean after making the trade and before closing it, Pepper testifies:—"I had authority from Dean to make the best disposition I could of the stock, to protect it from seizure. I went to Cincinnati to see Dean on this business, and to consult him about it. The arrangement with Nelson for the transfer of these 204 shares was made after my return from Cincinnati. The mode by which I proposed to protect the stock was understood between Dean and myself, before I returned to Memphis. I think he suggested some of the persons to whom the transfers were made. I had stated to him fully the course pursued by the vigilance committee, and the military and civil authorities of the city, towards myself and the company, and of their demonstrations to seize the effects of the company. p. 89.

"In making these transfers, I made the best arrangement I could to protect the stock. They were made in good faith, and I suppose would be carried out in good faith. *I made to the purchasers an exhibit of the business, to satisfy them that the stock was worth more than par, and would pay for itself at an early day.*" p. 92.

The stock having been purchased by Nelson and others, on the inducements thus held out by Pepper, the vendor, could he or Dean in his right, have maintained a bill to set aside the sale on this evidence?

It is probably true, as Pepper testifies, that these "sales would not have been made if the country had been at peace,"—This is undoubtedly the key to the transaction. When it was supposed by many, that Washington wonld be captured by the Confederates, the stress of that belief forced sales of property at enormous sacrifices. The contingencies of the war operated universally in determining the judgment, and action of men; but such considerations in the absence of fraud, or imposition have not heretofore

been considered as sufficient to avoid a contract for duress.

We do not deal with the question of "free will" as one of metaphysics. There is a destiny which shapes our ends, rough-hew them as we may.

All that the law requires is the exercise of a sane mind, with liberty of action. That Pepper was of sound mind and discretion, is admitted. That he acted with freedom and deliberation, is stated by himself in his going to Cincinnati and consulting with Dean. *Under what species of duress was Pepper while in Cincinnati? It was there that the determination to sell was arrived at*, and the transaction at Memphis was but its consummation.

Pepper and Dean speculated as to the *chances of war*. If they had firmly believed in the defeat of the Confederate cause, the sale would not have been made. That it was made is but an evidence they did not so believe.

Story is referred to in appellant's brief, for the doctrine that even if a party is of competent understanding, his acts may be avoided when made under *duress*, or the influence of *extreme terror*, or of *threats* or *apprehensions, short of duress*,

Where the party is *imprisoned*, his contracts will be set aside where there are but slight grounds to suspect oppression or omission.

Even where there is *no direct restraint* or duress, extreme necessity and distress may so overcome the party and deprive him of free agency as to justify the Court to interfere in his behalf.

But in this latter class of cases the Court intervenes to relieve the party only when there has been *oppression, fraudulent advantage, or imposition.*

1 Story's Eq. § 239.

By the common law, the duress which would avoid a contract, is confined to imprisonment, to fear of loss of life, for fear of mayhem, or loss of limb, and this on sufficient cause.

By the Roman law, the force or fear must be of such a nature as may well overcome a firm man.

Pothier holds that in considering the question of force in its operation on the mind, regard should be had to the age, sex, and condition of the parties.

But whether we apply the one rule or the other, the force which deprives the party of his free will must have a *direct relation to, and connection with the contract which is sought to be avoided.*

Mob law and violence, or the action of the elements may create such apprehension for the safety of property as to induce its sale for an inadequate consideration. But however strong the apprehension, however it may dominate the mind, the will is still left free, what to choose and what to do. The owner may retain his property, and take the hazard of its destruction, or he may dispose of his title to others who have more confidence in its safety. If his judgment uninfluenced by fraud or imposition induces him to select the latter, this is the exercise of free will. He cannot in legal parlance assert that he was *forced to enter into this contract.*

If Pepper had made the the sale in Cincinnati, and to one of its citizens, with what pretext could he have maintained the right to annul it? How would such a sale differ from the sale made in Memphis in execution of the determination arrived at in Cincinnati.

But in what does the pretended duress consist? Threats of seizure and confiscation of the stock. By whom were these threats made? We are not told. No law of confiscation, either of the State or Confederate states was in existence. *It is not pretended that Nelson was in anywise concerned in these threats.*

If the apprehension that confiscation laws might be passed induced the sale, this is not a duress which authorizes a repudiation of the contract, when the danger had ceased to exist.

But assume that there was duress. This did not render the sale *void*. It was *voidable* only. The purchaser of the stock would be bound by the contract. The vendor Pepper could elect to affirm or repudiate it.

But what right has Dean, the present defendant, to set up either this defense of duress or any of the other defenses which strike at the *bona fides* of the sale? The sale to Nelson was not made by him. He has no claim or right of action against Nelson, except such as arise from the notes and mortgage endorsed and assigned to him by Pepper. The stock was sold by Pepper not as Dean's stock, but as his own. The fact that it had formerly been Dean's, and that the purchaser so understood, cannot affect the legal relation of the parties.

We maintain therefor that these defenses are *personal to Pepper*. He has never repudiated the sale, on the contrary he has always insisted on their being executed in good faith.

Shepherd's Touchstone, 62, 288.

McLintock *vs.* Cummings, 3 McL., 158.

Huscomb *vs.* Standing Cro. Jac., 187.

Baylie *vs.* Clare, 2 Brownl. 276.

If we should further admit that these defenses might be urged by Dean, then, if having the right to affirm or disaffirm the contract, he has affirmed it, he is forever bound by this election.

Minneret *vs.* Emerick, 6 Wis., 355.

Masson *vs.* Boret, 1 Denio, 74.

In his interview with Nelson when they first met, as stated by himself, he insisted on the fulfillment of the contract, by the payment of the dividends. This same conduct marked his intercourse with the several other parties who had purchased on the same terms.

But further than this: In January, 1863, he appears before the "civil commission" and files his petition, setting forth

the sale of the stock by Pepper, the execution of the notes and mortgage by Nelson, and the assignment of these notes and mortgage by Pepper to him. He avers that by the terms of the contract, Nelson having failed to pay over the first dividends, the whole amount expressed in said notes became due and exigible, and prays for a decree to make good to him this whole amount.

The decree rendered, finds this amount to be $23,161—the par value of the 204 shares, and the sale of these shares is made for the sum of $11,628. Dean, therefore holds the stock under this decree, and has still outstanding an unsatisfied claim on these notes of $12,533.

This is as solemn an act of affirmance as can well be conceived of, and would preclude Dean from now repudiating the contract, if he once had possessed that right.

But not only did he thus affirm the contract in 1863, but he continues to affirm it to this day. In his answer to this suit he avers, "that by the *judgment of the civil commission*, he is in equity entitled to hold the stock against the complainant."

Notwithstanding this assertion of title under the contract, he urges defenses which deny that such a contract ever had a legal existence. A party, says Lord Kenyon, "will not be permitted to blow hot and cold" with reference to the same transaction, or insist at different times on the truth of each of two conflicting allegations, according to the promptings of his private interest "*Allegans contraria non est audiendus.*"

Broome's Maxims, p. 127.

We confidently submit the case on the following propositions:

1st. Admitting as the appellant contends that the mortgage is of the stock sold to Nelson, the default in payment does not vest such a title in the mortgagee as bars the right to redeem the same where the bill is brought within a reasonable time.

2d. That on mortgages of personal property the mortgagee may defeat this right of redemption without the aid of a bill of foreclosure He may on default sell the property, but this can only be legally done on giving due notice of time, place, &c., to the mortgager.

3d. That Dean acquired no title by his foreclosure suit filed before the civil commission, as the commission had no jurisdiction in the case. It not only was not authorized by the Executive, but its proceedings in the cause was in express defiance of its orders.

4. That if this jurisdiction in such a case could be sustained, its decree was nevertheless void, as made in the absence of the defendant and without notice to him.

5. That time will not be regarded in equity as an essential part of an agreement, when the lapse arises from not paying money on a specified day. Equity will not rescind a contract for this cause, even on an express stipulation—that if the whole sum be not paid at a particular day the bargain should be at an end.

6. That whether an executed contract is founded on inadequate consideration, or is purely voluntary, the legal conveyance being effectually made, a court of equity will interpose to enforce the equitable rights arising therefrom.

7. That whether the contract is affected by want of conrideration, imposition, duress or any other vice, it is not thereby made *void*, *voluntas coacta est voluntas*, and if the party wronged elects to affirm it, he is forever bound by that election.

8. That no party to a suit can be allowed to deny the obligation of a contract, and at the same time assert title under it, "*allegans contraria non est audiendus.*"

9. The sale of the stock having been made by Pepper, and Dean being the assignee of the notes given on that sale, he, Dean, cannot set up the want of consideration or duress in the transaction, as these defences, if good, are personal to Pepper alone.

10. That in the absence of fraud, or imposition, the facts shown by the record do not amount in law to duress, or to such force as deprived Pepper of the exercise of his free will in making the sale.

11. The decree which declares that Nelson is entitled to the stock, and Dean to the amount due on the notes, principal and interest, is based on the principles of equity and justice, and should be affirmed.

P. PHILLIPS,

Solicitor for Complainant.

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Croft
Nelson
and Thornton
by Wray -
Brown
Evans

Supreme Court of the United States.

No. 205.

THOMPSON DEAN, Appellant,

—*VS.*—

THOMAS A. NELSON,
MIRIAM W. NELSON,
BEN MAY, } Appellees.

ARGUMENT OF KORTRECHT & CRAFT, OF COUNSEL FOR APPELLEES.

Supreme Court of the United States.

No. 205.

THOMPSON DEAN, APPELLANT,

vs.

THOMAS A. NELSON,
MIRIAM W. NELSON,
BEN MAY, } APPELLEES.

ABSTRACT.

"THE MEMPHIS GAS LIGHT COMPANY" is a Tennessee corporation, having its location and office in the city of Memphis.

In the early part of 1861, Thompson Dean and J. H. Pepper owned three-fourths, or more, of the capital stock of the Memphis Gas Light Company, Dean owning sixteen hundred shares whose par value was $160,000, and Pepper owning two hundred shares whose par value was $20,000. Dean lived in Cincinnati, and Pepper lived in Memphis, Tennessee. Pepper was secretary of the Memphis Gas Light Company.

On the 23d of May, 1861, Dean sold all of his stock, and transferred it upon the books of the Gas Company, to Pepper. On the 11th of June, 1861, Pepper sold and transferred portions of this stock to various persons—five thousand dollars worth, or fifty shares, to Thomas A. Nelson. The sales thus made by Pepper were wholly on credit, and upon the condition that the stock was to be paid for by the earnings of the stock, or by dividends to be declared upon it. The price was the par value of the stock, to draw interest at the rate of six per cent. per annum from the date of sale. The purchasers, including Nelson, executed their notes to Pepper, reciting this condition on the face of them; and also containing the provision that the earnings or dividends should, as received, be applied first to the extinguishment of interest accrued,

and then to the reduction of the principal. In these notes it was further stipulated that if, at any time, the purchasers should fail to pay over, upon the notes, the dividends received, or an amount of money equal thereto, the whole amount remaining unpaid upon the note of such defaulting purchaser should, by reason of such default, become due and payable immediately.

On the 20th of July, 1861, Pepper sold all the stock originally owned by him, and sold it at par for cash. At the same time he sold all that remained of the stock transferred to him by Dean, on the same terms upon which the sales of the 11th of June had been made. Nelson was again one of the purchasers. He got sixty-three shares of Pepper's original stock, for which he paid $6,300 in cash, and one hundred and fifty-four shares of the Dean stock, for which he executed his notes for $15,400. Before making the sale, Pepper went north to see Dean, and the sale was made with Dean's knowledge and sanction.

A new feature was now introduced. The purchasers were required to execute, and did execute, mortgages "upon their interest in the property, real and personal, of the Gas Company," to secure, as well the notes given on the 20th of July, as those previously given on the 11th of June. Nelson executed two of these mortgages—one to secure the note for $5,000, made on the 11th of June, and the other to secure the note for $15,400, made on the 20th of July. These mortgages were recorded.

In these transactions perhaps one-half of the Dean stock was sold, and transferred on the books of the Company to Murphy, May, Church and Nelson; and the other half to Dean's personal friends, Adams and Williamson.

When Pepper had thus closed out his stock in the Gas Company, including the stock transferred to him by Dean, he very soon went north; and, upon his arrival there, transferred, assigned, and delivered to Dean the notes and mortgages which he had taken for the stock which Dean had transferred to him.

Nelson was thus the purchaser and owner of two hundred and four shares of the stock which Dean had transferred to Pepper; and, under the assignment from Pepper, Dean held Nelson's two notes, one dated June 11th, 1861, for $5,000, and the other dated

July 20, 1861, for $15,400, and was also the holder of the two mortgages made by Nelson to secure these notes.

Prior to the 6th of June, 1862, and in April and May of that year, Nelson transferred these two hundred and four shares of stock on the books of the Company—ten shares to Ben May, and one hundred and ninety-four shares to his wife, the complainant, Mrs. Miriam W. Nelson.

On the 6th of June, 1862, the Federal forces occupied Memphis. Nelson was president of the Bank of West Tennessee. The Confederate military authorities, in evacuating Memphis, compelled the removal of this bank to a point within the Confederate lines; and, as president, Nelson went with and in charge of the assets of the bank.

In June, 1862, Dean came to Memphis; and, soon afterwards, under the order of the Federal commander, Gen'l Hurlbut, took possession of the Gas Company, as receiver, and controlled its assets and business. Nelson returned to Memphis in October, 1862, and remained until April, 1863, when he was expelled and "sent south of the line of the United States forces, not to return," by order of Gen'l Hurlbut. (*See Record, page* 68.)

About the 1st of October, 1863, Nelson came from the South into the vicinity of Memphis, and sent in to Gen'l Hurlbut a written request for permission to return to the city. This request Gen'l Hurlbut in writing refused. (See Nelson's deposition, page 67 of record, section 208.)

In 1863, Brig. Gen'l Veatch, commanding the District of Memphis, (under Gen'l Hurlbut, who commanded the Department,) established in Memphis the "Civil Commission," as a tribunal or court in which certain civil matters might be adjusted. (For the constitution, aims, and powers of this Commission, see record, pages 20, 21, 22.)

In September, 1863, Thompson Dean filed his bill or petition in this Civil Commission, against Nelson and wife, and Ben May, for a foreclosure of the mortgages made by Nelson to secure the notes given by him as aforesaid for stock purchased from Pepper. The defendants were proceeded against as non-residents, and were, by publication made in a newspaper in Memphis, cited to appear be-

fore said Commission, "on or before the 8th day of October, 1863." (Record, pages 32, 33.)

A decree, pro confesso, or judgment by default, was rendered by the Civil Commission in this cause against Nelson and wife, and May, on the 12th of October, 1863; and, under such decree or judgment, the two hundred and four shares of stock which Nelson had as aforesaid transferred to his wife, and to Ben May, were sold by the Marshal of said Civil Commission to one Havlin, on the 14th of November, 1863, at the price of $11,628; and, under the order of the said Civil Commission, the said stock was afterwards transferred, on the books of the said Gas Company, to the said Havlin, and was, by said Havlin, transferred to Thompson Dean. It still stands on said books in Dean's name, and Dean has received the dividends declared upon it since June, 1862.

In June, 1865, immediately after the close of the war, Nelson and wife, and Ben May, filed their bill in equity in the Circuit Court of the United States at Memphis, against Dean, then within the jurisdiction, in which they alleged that Dean had illegally possessed himself of this stock, and prayed that he might be compelled to surrender and transfer it to its rightful owners, and to account for the dividends, etc. (Record, pages 1, 2, 3, 4.)

Dean answered, proof was taken, and, at the March Term, 1868, of said Court, the decree was rendered in favor of the complainants, from which this appeal is prosecuted.

BRIEF OF KORTRECHT & CRAFT, OF COUNSEL FOR THE APPELLEES.

The decree was resisted in the Court below, and will no doubt be sought to be reversed here, upon two grounds—

First. That the action of the "Civil Commission," established by Gen'l Veatch, in which the foreclosure proceedings were had, is a final adjudication of the matter.

Second. That if complainants are not concluded by the action of the Civil Commission, they must be repelled, because they seek by

their bill the specific performance of an inequitable or unconscionable contract.

As to the first ground, it is submitted for the appellees that the Civil Commission was, in no sense, a court.

In two cases this Civil Commission was decided by Judge Advocate General Holt to be anomalous, unauthorized and illegal. These cases were appealed to the Secretary of War—one by Dan Able and the other by Orgill. The opinions given by this law officer of the army to the Secretary of War are referred to, as contained in volume —— of printed opinions.

The Supreme Court of Tennessee has sustained the Civil Commission. *Heffenman vs. Porter, 6th Coldwell, (Tenn. Rep.,) 391.*

The decision seems to stand alone, and we submit that its reasoning does not commend it as the basis of subsequent adjudication. The right and duty of the conqueror to secure the inhabitants of the conquered country, in person and property, is pushed by this case to an extreme. If under this recognized doctrine of international law, every military officer of the conquering army may establish a civil court, with jurisdiction over the territory, small or large, which he happens to have under his command, a conquered country might have as many courts and systems of judicial proceeding as it contained military districts. Each of these courts, supreme in its sphere, and amenable to no revisal of its adjudications, might permanently fix the rights of persons and property. Surely this cannot be the correct interpretation of the law of war.

In Jecker vs. Montgomery, 13th Howard, 498, this Court incidentally recognized these military tribunals as "military agencies." So considered, their action would have none of the sanction or conclusiveness of judicial adjudication; but might be reviewed or corrected, or ignored by civil courts, just as other military orders are. A military commander's order, issued as such, is adjudicated upon, and declared void by the courts in a proper case. *Mitchell vs. Harmony, 13th Howard, 115.* What additional validity does such an order derive from being issued through the agency of a commission?

It is respectfully submitted, as apparent from the order constituting the Civil Commission in Memphis, (page 20 of record,) that

Gen'l Veatch intended to create only a military agency; and that the attempt to attach to the orders of the Commission the character of conclusive or judicial adjudication, is as contrary to his design as it is to the war law under which he acted.

But, leaving our colleague to elaborate the argument on this point, we proceed with the discussion as though the Civil Commission was really a *court*, as fully as it is held to have been by the Supreme Court of Tennessee in the case cited. As such a court there were, of course, limits to its jurisdiction, as to persons as well as to subject matter; and if those limits can be fixed, all other courts may inquire, in any particular case, whether they were transcended, and may pronounce any judgment or decree void if the jurisdiction was wanting.

In Webb vs. Lietsendorfer, 20th Howard, and on page 177, this court recognizes, on the part of the conqueror, in conquered territory, "the duty of maintaining the security of the inhabitants in their person and property." This was the duty in obedience to which Gen'l Veatch established the Civil Commission, as is evident upon the face of his order. Of such a court, the necessity for action to secure the inhabitants in their person and property, would seem to be the limit or test of jurisdiction as to subject matter. And as to persons, the jurisdiction would seem to be limited to the territorial bounds of the command of the officer establishing the court. Tested by these rules, the proceedings of the Civil Commission here relied upon must be regarded as *coram non judice*, and void, because

First. There was no necessity for the action in order to secure rights claimed by Dean. He was already in possession of the stock, and in full receipt and enjoyment of its proceeds and profits; and whether he thus held and enjoyed it rightfully or wrongfully, was a question which *he* might have been willing to postpone.

Second. The defendants against whom the Civil Commission was proceeding, were absent from the State and beyond the territorial limits of the military command that embraced Memphis.

But again: if the Civil Commission was a *court*, it was a court created by Gen'l Veatch, and its powers were such as he conferred; and its proceedings must have been conducted in the mode which

he prescribed in order to render them valid. Admitting for the argument, that the jurisdiction embraced the subject matter and extended to the persons, was the jurisdiction properly exercised? "The laws and rules of practice of the courts of Tennessee" were prescribed for the government of the Commission. (*Record, page 22.*) And it was provided that "non-residents and absent defendants may be brought into court by publication, and pro confesso be taken, or process of contempt be had for failing to appear and answer, as nearly as convenient, according to the practice of courts of equity in Tennessee." (*Record, page 21, paragraph 66.*) It was then the law of Tennessee that Gen'l Veatch undertook to administer, and the practice of the Tennessee courts which he adopted as the mode of administration. Now we submit that, even if this Civil Commission shall be conceded to occupy the position of a chancery court of Tennessee, and to be entitled to all the "faith and credit" which could be claimed for a chancery court of Tennessee, yet the particular adjudication of that Commission which **is here relied upon must be declared void.**

The defendants were all non-residents, and it was attempted to bring them before the court by publication in a newspaper. (*Record, pages 32, 33.*) That they had no actual notice is apparent, and we contend that they had no constructive notice, because the Tennessee law, as to constructive notice, was not complied with. The order of publication was based upon the marshal's return "not found." (*Record, page 32.*) The statute allows it upon the return "not to be found." As to difference, see Welch vs. Robinson, 10th Humphreys, (Tenn.) 264. The statute also allows publication upon proof of non-residence, but requires this proof to *precede* the order of publication. Here it is recited in the decree (*Record, page 34, section 104,*) that the proof of non-residence was made *at the hearing.* As to cases and manner in which publication in chancery may be made in Tennesse, see Code of Tennessee, (1858,) section 4352, &c.

Publication not authorized by the statute is absolutely void—not voidable. *Hollingsworth vs. Barbour, 4th Peters, 466, 473-4.*

Resort to constructive notice cannot be had in Tennessee, (nor anywhere,) except in cases in which some property or right of

property of the defendant is first within the jurisdiction of the tribunal giving such constructive notice. Such property or right is always the basis of the jurisdiction which courts undertake to exercise by means of constructive notice. In this case, the Civil Commission was called upon to foreclose mortgages alleged to have been made upon the property of defendants, which property, to-wit, stock in the Memphis Gas Light Company, was in Memphis, where the corporation had its situs, and where the court sat. The mortgages are called mortgages upon the stock, and as such, are foreclosed by a sale and transfer of the stock. It is in virtue of the mortgages that the jurisdiction is invoked and undertaken to be exercised. But, upon the face of these mortgages, it appears that they are not, and do not pretend to be, mortgages of stock, but are mortgages of "so much of my" (T. A. Nelson's) "undivided interest, right, title and estate in the property and premises of and belonging to the Memphis Gas Light Company, hereinafter described, as shall be represented by and equal to" the specified amount of dollars of the capital stock of said Company at par—the property real and personal of said Gas Light Company being then particularly described. (*Record, pages 15, 16, 17, 18.*) This is not, in any sense, a mortgage of *stock*. As a stockholder, Nelson could have no right or interest in the property, real and personal, of the corporation. The stockholder's interest is in the *profits*, not the *property* of the corporation.

2nd Redfield on Railroads, pages 460, 514

5th Gray, (*Mass. Rep.*,) *378.*

9th Yerger, (*Tenn. Rep.*,) *511.*

If anything passed by these mortgages to the mortgagee, it certainly was not the mortgagor's *stock* that passed. The stock was not attached, nor in any other way before the Commission or court. If the mortgagor had any interest in the property of the Gas Light Company which was conveyed by the mortgages, and which, by virtue of the mortgages, was the basis of jurisdiction by means of constructive notice, it was that interest which became subject to the decree of the court, and which should have been sold. If the mortgagor had no such interest, (and this court will know that, in the very nature of things, he could not have had,)

the constructive notice resorted to, other objections aside, did not bring the defendants before the court, and the decree, for that reason, was void, there being no jurisdiction of the person. And, as the mortgages did not convey the stock, and the stock was not otherwise brought into court so as to be subject to its decree, the decree directing the sale of the stock was void, there being no jurisdiction of the subject matter.

But it is said that these were *intended* to be *stock* mortgages, and have been so considered and denominated by the parties. If this be so, it might have been ground for the reformation of the instruments, but does not aid the proceedings which were actually had.

It was also claimed in the court below that these instruments are not mortgages, but are absolute conveyances with defeasance, to be null and void if the conditions are performed, but to be absolute upon default; that the condition of paying over dividends received has been broken, and that therefore the conveyances have become absolute, and all of Nelson's title has been divested and vested in Pepper, (and in Dean, his assignee,) even without reference to the decree of the Civil Commission. If this is the character of the instruments, still they are conveyances only of Nelson's interest in "the property of the Gas Light Company," and *stock* would not pass under them. But we submit that this theory is too far at variance with the whole history of the transaction, and with Dean's sworn statements made in the petition filed in the Civil Commission, to be now considered.

As a question of law, however, this transaction has none of the elements of conditional sales. *Hickman vs. Cantrell, 9th Yerger, (Tenn.) 172.*

If they had been conveyances of stock, only the equitable title would have passed, because the legal title could not be transferred except upon the stock books of the Company. The legal principles as to conditional sales sought to be relied upon have application only to *legal titles.*

Moreover, we insist that Nelson was not in default as to paying over the dividends; and the condition has not happened therefore upon which, according to the conditional sale theory, the convey-

ces were to become absolute. If the alleged default and consequent absolute vesting of title happened at all, it was *before* the proceedings in the Civil Commission were begun; but when Dean filed his petition in the Civil Commission he said, *under oath*, that Nelson and the other defendants were *owners* of the stock. He is estopped by this record.

The default asserted is the failure of Nelson to pay over to Dean certain dividends declared upon the stock, and which, by the terms of the contract of purchase, were to be paid over as soon as received. It is true that three dividends were paid to Nelson, to-wit, in September, 1861, in December, 1861, and in March, 1862. (*See deposition of Fitch, Record, page 76.*) And it is also true that Nelson did not pay over these dividends. But it appears from the Record that the notes of Nelson upon which the dividends were to be paid over were not, when Nelson received the money, in Memphis, and that Dean was not there, and that Dean had no agent there to receive the money for him. He could not therefore pay them over. It is claimed that Pepper's agent was in Memphis, ready and willing to receive the money. At the same time however, it appears that Pepper no longer owned the notes, and was not entitled, either by himself or agent, to receive the money. Besides, at the time when all these dividends were received, Nelson was within the Confederate lines, and Dean in Ohio. The enemy relation existed between them, and it would have been unlawful for Nelson to pay, or for Dean to receive, even if payment had been practicable. Nelson swears that as soon as it became lawful and practicable, he offered to pay to Dean, and Dean refused to receive the amount of dividends paid to Nelson. Dean denies this. Kendig's deposition, (*Record, page 43,*) is corroborative of Nelson's testimony.

Lastly, as to the point of jurisdiction, we say that even if the Civil Commission had been a regularly constituted State or Federal court, it could not have entertained a suit against the defendants, either upon actual notice, if that had been practicable, or *a fortiori*, upon the constructive notice resorted to.

Memphis was then in the lines of permanent military occupation by the United States forces. The defendants were all in the Con-

federate lines, and could have no status, voluntarily or involuntarily, in any court of the United States, or of a State under the control of the United States. On page 34 of Record, paragraph 104, the disloyalty of defendants is recited by the decree of the Commission, and on page 35, paragraph 108, it is recited in same decree, that defendants have gone "within the lines of persons now in arms against the government."

In the case of the Connecticut Mutual Life Insurance Company vs. Winchester Hall, et al, reported in the American Law Register for 1868, volume 7, No. 10, new series, page 606, the Superior Court of Chicago held that a proceeding could not be sustained in the courts of Illinois, to foreclose a mortgage against a mortgagor within the rebel lines upon newspaper publication; and that a decree rendered in such a proceeding was void *jure gentium*. This judgment proceeds upon the idea, first, that a state of war suspends all contracts previously existing between citizens of one belligerent with citizens of the other belligerent, and renders it impossible "to enforce such contracts *in rem* when the *res* lies at the creditor's door:" And second, upon the ground that from the prohibition of intercourse between belligerents, the attempt to acquire jurisdiction by publication in a newspaper is a violation of law if it is expected that the defendant shall receive notice, or a fraud if it is presumed that he will not receive it. Jameson J. says in the opinion, "The only principle upon which it could be justified would be, that the debtor, being an enemy, had no rights which a court of justice was bound to respect. If the mere publication of a notice in a newspaper could be made the ground of jurisdiction against an enemy's property, under the circumstances supposed, why might it not also against the estate of an infant *in utero*, or against the property of a dead man? Titles thus acquired would rest upon a basis of robbery, not upon a judicial divestiture of the debtor's interest recognized as just *jure gentium*."

This strong language of the Illinois Court will scarcely seem inaptly quoted here when we look to the peculiar circumstances under which the defendants, Nelson and wife, were within the rebel lines. In his deposition, (*Record, page 67*,) Nelson states, that he left Memphis when the United States forces occupied it, having

been ordered, as president of the Bank of West Tennessee, to remove the assets of that Bank to Confederate territory, but left his family at home; that he returned to Memphis in October, 1862, and remained there until April, 1863, when the commanding officer, Gen'l Hurlbut, compelled him to "remove his family south of the lines of the United States forces not to return," because of certain guerrilla outrages, with which he was in no way connected—he (and others) being selected as the victims of this form of retaliation, because they were suspected of being "secessionists or rebel sympathizers;" and that about October 1st, 1863, he "came near to Memphis and addressed a communication to Gen'l Hurlbut, asking for permission to return to the city, which request was refused by Gen'l Hurlbut in writing." It will be seen that the newspaper publication made by the Civil Commission, (Record, page 32,) required the defendants to appear on or before the 8th day of October, 1863. Here then Gen'l Veatch, through his court of Civil Commission, was calling upon these defendants to appear in said court in Memphis, when Gen'l Hurlbut, the superior officer commanding the Department, had forced two of them (Nelson and wife) to go beyond the United States lines "not to return." And the singular coincidence will be observed that Nelson and wife, thus summoned to appear on the 8th day of October, although wholly ignorant of the order, did, about the 1st day of October, present themselves at the lines near Memphis and ask Gen'l Hurlbut's permission to come in, which permission Gen'l Hurlbut refused. The subordinate officer in command of the district orders, through his court, that Nelson and wife shall appear upon pain of an *ex parte* judgment against them by default, under which their property is to be wrested from them; and at the same time Gen'l Hurlbut, the superior and commanding officer of Gen'l Veatch, sternly refuses them permission or opportunity to obey Gen'l Veatch's order!

If, however, it shall not seem to this court that, for the reasons above, the action of the Civil Commission was, as an adjudication, void, we recur to the position that the Civil Commission was not a court, but was merely a military agency through which the orders of the commanding officer of the district of Memphis were issued; and that its judgments or decrees, like other military orders, may

be reviewed by any court in which they are relied upon or called in question.

Thus reviewed, we insist that the decree of the Civil Commission was erroneous, and will be set aside by this court, because, as argued before, there was no mortgage upon *stock*, and therefore the *res* was not before the court; and because, as matter of fact and law, even if the mortgages were of stock, there was no default on Nelson's part under the contract. Other errors might be suggested, but these are palpable and sufficient.

Upon these views we claim that the action of the Civil Commission is no obstacle in the way of the appellees when they seek to be restored to the possession of property forcibly wrested from them.

It remains, then, to consider the other ground upon which appellant bases his defense, to-wit, that appellees seek the specific performance of an inequitable contract.

This argument assumes that appellees are seeking the specific execution of a contract, executory in its character. We insist that this view is not in any way sustained by the frame of the bill, or by the terms of the contract.

The contract set out in the bill is one fully executed on the part of Pepper, who is the assignor of appellant, leaving, so far as the contract is concerned, nothing whatever to be done on the part of the vendor or his assignee. It shows a sale by Pepper of stock owned and held by him, and the transfer by him of the legal title on the books of the Gas Company, and the issuance by the Company to Nelson of certificates of stock. Here are a sale, a vestiture of title, and delivery of possession. This is a contract in which appellant has no part. The bill charges, that by assignment from Pepper, appellant became the holder of the purchase money notes, and the mortgages by which they were secured; and that, as a wrong doer, he has possessed himself of the stock. The relief asked is, that *appellees* may be allowed, under the decree of the court, to perform *their* part of the contract, which appellant refuses to allow them to do. The bill charges a wrongful divestiture of their legal title to the stock, by transfer on the books of the Com-

pany, and a forcible seizure and appropriation by appellant of their property. It seeks an account of dividends received by appellant upon the stock thus seized, and an application of the same to the payment of the purchase money notes given by Pepper to Nelson. It is apparent, then, that the only execution by appellant of the original contract made with Pepper, which is sought by the bill, is, that appellant shall be required to receive payment, if he has not already done so, according to the terms of said contract, of the notes given by Nelson to Pepper, and assigned by Pepper to appellant. The equity of the bill is, as to appellant, wholly *dehors* the contract, and the defence is an affirmative one, by which appellant virtually seeks the rescission of the contract, after, as to his assignor, it has become fully executed. If, under the same circumstances, the stock had been conveyed to Nelson as a *gift*, we suppose that not even in the Civil Commission would appellant have been heard to claim its restoration; and if it had been a *gift*, and if, through the agency of the Civil Commission or otherwise, appellant had succeeded in having the title and the possession transferred from appellees to him, appellees would, as we insist, have been able to maintain, in a court of equity, their claim to recover it.

But we do not concede that there was want of consideration, or of mutuality, or good conscience in the contract. It is not pretended that the contract was brought about by fraud, imposition, duress, or any sort of unfairness on the part of Nelson. The proposition of sale and all the details of its terms came from Pepper himself. If appellant was interested, he knew and sanctioned all that was done. More than a month intervened between the two sales, and, after this ample time for consideration, the second sale was made upon the terms of the first as to price, and the first sale was confirmed by taking the mortgage. The purchase money was the full par value of the stock, with interest. This purchase money was to be paid, it is true, out of the net earnings of the stock, if Nelson should receive them; but, by another provision, it was also to be paid by Nelson *whether he should receive the net earnings or not.* By the terms of the contract, whenever the *Gas Company* should receive the net earnings, whether the same should be paid over to Nelson or not, Nelson was bound to pay over the

amount of such net earnings on the contract; and if he should fail to do so, the whole purchase money was at once to become due from him as a money demand. The contract was one, therefore, in which Nelson incurred risk and pecuniary responsibility, and by which Pepper secured payment in full of the par value of his stock, with interest, if the net earnings of the stock should amount to so much, even though Nelson should not be profited by those net earnings.

We insist, that even if Pepper had made an executory contract to convey upon these terms and under the same circumstances, a bill for its specific performance would have been maintained. How then can Pepper's assignee, without legal interest in the contract, except as assignee of Nelson's indebtedness under it, be heard to claim the property for which the debt was created, instead of the money due him under the assignment? But, under this head of his defense, such is the claim which he asserts,—asserts too in the face of his sworn statements in the Civil Commission, that by the contract Nelson had become the *owner* of the stock, and his debtor to the extent of the purchase money notes assigned.

It is claimed that Dean's transfer of the stock to Pepper was in trust merely—not an absolute sale; but though charged in the answer, it is not shown, and is not at all probable that Nelson knew anything of this trust if it existed. He did know that Pepper consulted Dean about the sale to him, and obtained Dean's sanction of it; but Fitch proves, (*Record, page 79, paragraph 242,*) that Pepper said he had bought the stock from Dean on credit, without definite understanding as to the mode of payment; and Pepper's motive in consulting Dean may have been, and may have been understood to be, to obtain the consent of Dean to accept the assignment of the notes, etc., which in fact was made, in discharge of his own indebtedness to Dean for the stock. We do not see, however, how the manner of Pepper's holding, or Nelson's knowledge in regard thereto, can affect the case. If Pepper was trustee, he was clothed with the legal title, and contracted in his own name, and on his own behalf. This was done with the knowledge and sanction, probably—as May says that he learned from Pepper—(*Record, page 61, paragraph 190,*) upon the plan, and under the

immediate direction, of Dean. Dean states in his own deposition that Pepper had full authority to make the contracts, and Pepper says they were made with full authority from Dean, in good faith; and that he supposed they would be carried out in good faith.

It is not claimed or pretended that the sale to Nelson was with any trust, or reservation, or defeasance; but, while the sale is admitted to have been at Dean's own prompting, well considered, and absolute, it is claimed that the terms of the sale were "unusual," and therefore inequitable. While all of the stock which Dean had owned seems to have been transferred, it is apparent from the whole record that the majority of it was transferred to his personal friends, Adams and Williamson, upon the trust and confidence that it would be held for and restored to him. Pepper told May that it was the intention to retain a large portion, (*Record, page 61,*) and Dean says in his answer, (*Record, page 9, section 30,*) that in December, 1862, he had "a large interest in the capital stock of the Company." It is apparent that in the troubled and uncertain condition of affairs, Dean was endeavoring to adopt a plan which would furnish him the greatest protection against dangers apprehended from a state of war. Although the stock is shown to have been valuable, it is not probable that so large an amount of it could have been sold for *cash*, and altogether improbable that the cash that could have been obtained, was of a sort of currency to be desired. But it was not Pepper's wish (or Dean's as the case may be,) to part with all the stock; and the prospect was that, by the return of peace or the contingencies of war, the season of apprehended danger would be short. If the whole stock had been transferred to one or two friends to be held in trust, suspicion might have attached to the transaction, and the influence to ward off danger might not be secured. For this or other reasons, Pepper and Dean saw their interest in an arrangement which promised to secure payment of the par value of a portion of the stock sold, and protection for the larger portion retained, though nominally transferred. The payments were not to be due until net earnings should be received by the Company; but the payments were to be due whenever the *Company* should receive net earnings, whether Nelson should get them or not; and

thus the risk of both Confederate and Federal confiscation of the stock was assumed by Nelson, if net earnings should accrue. Neither Pepper nor Dean has seen fit to explain the motives that led to the contract, and this theory is wholly conjectural. It seems to us to account for what is termed "unusual" in the contract. But the motives, whatever they may have been, were not made known to Nelson, and it did not concern him to know them. The contract was proposed to him, and was accepted by him. He took upon himself its risk and obligation, and is entitled to its benefits. If the stock had never been taken away from Nelson, and Dean had received the dividends upon it as he has done, could Dean maintain a bill to rescind upon the ground of this branch of his defence? If he could not, and appellees have been illegally deprived of the possession, their effort to regain possession cannot, upon that ground, be defeated.

While we confidently insist that the proceedings of the Civil Commission have no validity, or certainly no conclusiveness as an adjudication, we claim, neverthless, that those proceedings were an affirmance and ratification of the contract between Pepper and Nelson, made by appellant *under oath;* and that those proceedings, especially when they are set up and relied upon by appellant in his answer in this cause, must operate to estop appellant to disavow or disaffirm, or in any way call in question the validity of that contract. Why did not appellant go into the Civil Commission to rescind the contract? Did he not, by the course which he adopted, waive his right to a rescission, if it ever existed? When his defense in this cause is rested upon the ground that the contract between Pepper and Nelson was inequitable, he abandons the Civil Commission proceedings as an adjudication in affirmance of the contract, but seeks to retain the possession acquired thereby in aid of his claim to rescission. Must he not place appellant *in statu quo* by restoring possession before he can be heard to assert the invalidity of the original contract?

Whether appellant's possession is rightful or not must be determined wholly upon the Civil Commission proceedings. If it is wrongful, because those proceedings were wrong, then it cannot